United States Bankruptcy Court
Southern District of Texas
ENTERED
July 28, 2026
Nathan Ochsner, Clerk

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	)	Chapter 11
REPUBLIC NATIONAL DISTRIBUTING COMPANY, LLC, *et al.*,[1]	)	Case No. 26-90737 (CML)
Debtors.	)	(Jointly Administered)

INTERIM ORDER
(I) AUTHORIZING THE DEBTORS TO OBTAIN POSTPETITION FINANCING, (II) GRANTING LIENS AND PROVIDING CLAIMS WITH SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS, (III) AUTHORIZING THE USE OF CASH COLLATERAL, (IV) MODIFYING THE AUTOMATIC STAY, (V) SCHEDULING A FINAL HEARING, AND (VI) GRANTING RELATED RELIEF

Upon the motion (the "Motion")[2] of Republic National Distributing Company, LLC ("RNDC") and each of its affiliated debtors and debtors-in-possession (collectively, the "Debtors") in the above-captioned chapter 11 cases (collectively, the "Chapter 11 Cases"), seeking entry of an interim order (this "Interim Order") and a final order (the "Final Order"), pursuant to sections 105, 361, 362, 363, 364, 503, and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the "Bankruptcy Code"), rules 2002, 4001, 4002, 6003, and 6004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), rules 2002-1, 4001-1(b), and 9013-1 of the Local Rules of the United States Bankruptcy Court for the Southern District of Texas (the "Bankruptcy Local Rules"), and the *Procedures for Complex Cases in the Southern District of Texas* (the "Complex Case Procedures"), seeking relief, among other things:

a. authorizing the Debtors to obtain, and unconditionally guarantee superpriority, debtor-in-possession financing (the "DIP Facility"), which facility shall consist of: (i) $75

[1] A complete list of each of the Debtors in these Chapter 11 Cases may be obtained on the website of the Debtors' proposed claims and noticing agent at https://omniagentsolutions.com/RNDC. The location of Debtor Republic National Distributing Company, LLC's principal place of business and the Debtors' service address in these Chapter 11 Cases is 4300 Wildwood Parkway, Suite 200, Atlanta, GA 30339.

[2] Capitalized terms used but not otherwise defined herein have the meanings ascribed to them later in this Interim Order, in the Motion, or in the DIP Loan Documents, as applicable.

million in new-money revolving credit commitments (collectively, the "Revolving DIP Commitments," and all Revolving DIP Commitments extended, the "DIP New Money Loans"), of which up to $50 million shall be made available upon entry of this Interim Order (the "Interim Draw"); (ii) subject to the terms and conditions set forth in the DIP Loan Documents, upon entry of this Interim Order, a "roll-up" of all outstanding Fourteenth Amendment Priority Delayed Draw Term Loans (as defined in the Prepetition Credit Agreement), totaling $66,313,172.05, into term loans under the DIP Facility, which shall constitute DIP Obligations, in accordance with the priority set forth in the DIP Credit Agreement and the Prepetition Credit Agreement; and (iii) upon entry of the Final Order, a "roll-up" of $108,686,827.95 of the Revolving Loans (as defined in the Prepetition Credit Agreement) into term loans under the DIP Facility (the term loans issued in connection with (ii) and (iii), collectively, the "Roll-Up DIP Loans," and together with the DIP New Money Loans, the "DIP Facility Loans"), which shall constitute DIP Obligations, in accordance with the priority set forth in the DIP Credit Agreement and the Prepetition Credit Agreement, with Wells Fargo Bank, National Association ("WF"), as administrative agent (in such capacity, the "DIP Agent") for itself and the DIP Lenders, subject and pursuant to the terms of this Interim Order, that certain Senior Secured Super-Priority Priming Debtor-In-Possession Credit Agreement by and among each of the Debtors (each in their capacities as borrowers, collectively, the "DIP Borrowers," and as guarantors, collectively, the "DIP Guarantors"), the DIP Agent, and the lenders party thereto (collectively, the "DIP Lenders," and together with the DIP Agent, the "DIP Secured Parties"), which shall be in form and substance acceptable to the DIP Agent and the DIP Lenders and substantially similar to the form attached hereto as **Exhibit 1** (as the same may be amended, restated, supplemented, or otherwise modified from time to time pursuant to the terms thereof, the "DIP Credit Agreement") and any related documents and instruments delivered pursuant to or in connection therewith (collectively, and together with the DIP Credit Agreement, the "DIP Loan Documents");

b. authorizing the Debtors to (i) execute and enter into the DIP Loan Documents and (ii) perform such other and further acts as may be required in connection with the DIP Loan Documents;

c. authorizing the Debtors to pay, on a final and irrevocable basis, the principal, interest, fees, expenses, and other amounts payable under the DIP Loan Documents as such become earned, due, and payable, including, without limitation the Arranger Fee, the Closing Fee, and the Exit Fee, agency fees, audit fees, appraisal fees, valuation fees, administrative and collateral agents' fees, and the reasonable and documented fees and disbursements of the DIP Agent's and the other DIP Lenders' attorneys, advisors, accountants, appraisers, bankers, and other consultants, all to the extent provided in, and in accordance with, the DIP Loan Documents;

d. subject to the Carve Out, authorizing the Debtors to grant (i) valid, enforceable, nonavoidable and fully perfected security interests and liens (including liens pursuant to sections 364(c)(2) and 364(c)(3) of the Bankruptcy Code and priming liens pursuant to section 364(d) of the Bankruptcy Code on the DIP Collateral), and all proceeds thereof, including, subject to entry of the Final Order granting such relief, Avoidance Proceeds, whether received by judgment, settlement or otherwise, to the DIP Agent, for the benefit of the DIP Secured Parties to secure all obligations of the Debtors under and with respect to the DIP Facility (collectively, the "DIP Obligations"), subject to the Permitted Prior Senior Liens, and (ii) superpriority claims (including a superpriority administrative expense claim pursuant to section 364(c)(1)

of the Bankruptcy Code) to the DIP Agent, for the benefit of the DIP Secured Parties, having recourse to all prepetition and postpetition property of the Debtors' estates, now owned or hereafter acquired, including, solely upon entry of the Final Order, Avoidance Proceeds, whether received by judgment, settlement or otherwise;

e. authorizing the Debtors' use of cash collateral, as such term is defined in section 363(a) of the Bankruptcy Code (but excluding any cash collateral subject to Permitted Prior Senior Liens) ("Cash Collateral") in accordance with the terms and conditions set forth in this Interim Order and the DIP Credit Agreement;

f. authorizing the Debtors to provide, solely to the extent of any Diminution in Prepetition Collateral Value, adequate protection of the liens and security interests granted by the Debtors pursuant to that certain Third Amended and Restated Credit Agreement, dated as of November 1, 2022 (as amended, restated, amended and restated, modified, or otherwise supplemented from time to time prior to the date hereof, the "Prepetition Credit Agreement," and the credit facility evidenced thereby, the "Prepetition Credit Facility"), by and among Debtor RNDC, as borrower, the other subsidiary borrowers party thereto, the lenders parties thereto (the "Prepetition Lenders"), and WF as administrative agent and collateral agent (in such capacity, the "Prepetition Agent" and together with the Prepetition Lenders, the "Prepetition Secured Parties"), the Prepetition Security Documents and all collateral and ancillary documents executed or delivered in connection therewith (collectively, the "Prepetition Loan Documents"), for the benefit of the Prepetition Secured Parties, and as more fully set forth in this Interim Order;

g. subject to and effective upon entry of the Final Order, authorizing the Debtors to waive, (i) any right to surcharge against the DIP Collateral and the Prepetition Collateral pursuant to section 506(c) of the Bankruptcy Code, (ii) the equitable doctrine of "marshaling" and any other similar equitable doctrine with respect to the DIP Collateral and the Prepetition Collateral, and (iii) the "equities of the case" exception under section 552(b) of the Bankruptcy Code with respect to the proceeds, products, offsprings or profits of the Prepetition Collateral;

h. scheduling a final hearing (the "Final Hearing") on the Motion no later than 30 days after the entry of this Interim Order to consider entry of the Final Order granting the relief requested in the Motion on a final basis, in form and substance reasonably acceptable to the DIP Agent acting at the direction of the Required DIP Lenders[3] (as to the DIP Facility) and the Prepetition Agent acting at the direction of the Required Prepetition Lenders[4] (as to the use of Cash Collateral) and adequate protection;

i. modification of the automatic stay imposed under section 362 of the Bankruptcy Code to the extent necessary to permit the (i) Debtors, (ii) the DIP Agent and the DIP Lenders, and (iii) the Prepetition Secured Parties to implement and effectuate the terms of this Interim

[3] For purposes of this Interim Order, "Required DIP Lenders" shall mean the Required Lenders (as defined in the DIP Credit Agreement).

[4] For purposes of this Interim Order, "Required Prepetition Lenders" shall mean the Required Lenders (as defined in the Prepetition Credit Agreement).

Order and the DIP Loan Documents; and

j. granting a waiver of any applicable stay (including under Bankruptcy Rule 6004) and provision for immediate effectiveness of this Interim Order.

This Court having considered the Motion, the exhibits attached thereto, the DIP Declarations, and the evidence submitted and arguments made at the interim hearing held on July 27, 2026 (the "Interim Hearing"); and notice of the Interim Hearing having been given in accordance with Bankruptcy Rules 2002, 4001(b), (c), and (d), and all applicable Bankruptcy Local Rules; and the Interim Hearing having been held and concluded; and all objections, if any, to the interim relief requested in the Motion having been withdrawn, resolved, or overruled by the Court; and it appearing that approval of the interim relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates pending the Final Hearing, and otherwise is fair and reasonable and in the best interests of the Debtors' estates, their creditors, and other parties in interest, and is essential for the continued operation of the Debtors' businesses and the preservation of the value of the Debtors' assets; and this Court having determined that it can enter a final order consistent with Article III of the United States Constitution; and it appearing that the Debtors' entry into the DIP Credit Agreement and the other DIP Loan Documents is a sound and prudent exercise of the Debtors' business judgment; and after due deliberation and consideration, and good and sufficient cause appearing therefor;

BASED UPON THE RECORD ESTABLISHED AT THE INTERIM HEARING, THIS COURT MAKES THE FOLLOWING FINDINGS AND FACT AND CONCLUSIONS OF LAW:[5]

A. **Petition Date**. On July 26, 2026 (the "Petition Date"), each of the Debtors filed a

[5] The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

voluntary petition for relief under chapter 11 of the Bankruptcy Code in this Court.

B. **Debtors in Possession**. The Debtors continue to manage and operate their businesses and properties as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

C. **Jurisdiction; Venue**. This Court has jurisdiction over the Chapter 11 Cases, the Motion, and the parties and property affected hereby pursuant to 28 U.S.C. § 1334 and the *Order of Reference to Bankruptcy Judges from the United States District Court for the Southern District of Texas*, entered May 24, 2012. Consideration of the Motion constitutes a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue for the Chapter 11 Cases and proceedings with respect to the Motion is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. This Court may enter a final order consistent with Article III of the United States Constitution. The statutory and procedural bases for the relief sought in the Motion and granted in this Interim Order are sections 105, 361, 362, 363, 364(c), 364(d), 364(e), 503, and 507 of the Bankruptcy Code, Rules 2002, 4001, 4002, 6003, and 6004 of the Bankruptcy Rules, and Rules 2002-1, 4001-1(b), 4002-1, and 9013-1 of the Bankruptcy Local Rules.

D. **Committee Formation**. As of the date hereof, the Office of the United States Trustee for the Southern District of Texas (the "U.S. Trustee") has not yet appointed an official committee of unsecured creditors in the Chapter 11 Cases (a "Committee") pursuant to section 1102 of the Bankruptcy Code.

E. **Notice**. Notice of the Motion and the Interim Hearing has been provided in accordance with the Bankruptcy Code, the Bankruptcy Rules, and the Bankruptcy Local Rules, and no other or further notice of the Motion with respect to the relief requested at the Interim Hearing or the entry of this Interim Order shall be required.

F. **Debtors' Stipulations With Respect to Prepetition Secured Obligations.** Subject to the limitations described below in paragraph 16, the Debtors hereby admit, acknowledge, agree, and stipulate that:

(i) *Prepetition Credit Facility.* As of the Petition Date, the Debtors were truly and justly indebted, to the Prepetition Secured Parties, without defense, counterclaim, or offset of any kind, pursuant to the Prepetition Loan Documents in the aggregate principal amount of $224,947,167.12 in respect of the loans made under the Prepetition Credit Facility and payment-in-kind interest under the Prepetition Credit Agreement (collectively, the "Prepetition Loans"), *plus* accrued and unpaid interest at the default rate with respect thereto and any additional fees, indemnification obligations, reimbursement obligations, charges, premiums, costs, and expenses (including any fees and expenses of attorneys, financial advisors, and other professionals that are chargeable or reimbursable under the Prepetition Loan Documents) due under the Prepetition Credit Agreement and the other Prepetition Loan Documents (in addition to issued Letters of Credit totaling $1,010,719.00) (collectively, together with all other obligations of the obligors arising under the Prepetition Loan Documents (including, without limitation, the "Obligations" as defined in the Prepetition Credit Agreement), the "Prepetition Secured Obligations");

(ii) *Prepetition Collateral*. Pursuant to that certain Guaranty and Security Agreement dated as of November 1, 2022, the guarantees, the mortgages, any control agreement, intellectual property security agreements, and other collateral documents and agreements (as amended, restated, supplemented, or otherwise modified from time to time and in effect on the date hereof, collectively, the "Prepetition Security Documents") and the other Prepetition Loan Documents the Debtors granted to and/or for the benefit of the Prepetition Secured Parties first priority (subject only to the Prior Permitted Liens), valid, perfected, and enforceable security interests and liens (collectively, the "Prepetition Liens") in and on all Collateral (as defined in the Prepetition

Credit Agreement) then owned or thereafter acquired, upon which a lien was purported to be created by any Prepetition Security Document (the "Prepetition Collateral");

(iii) *Prepetition Secured Obligations*. (a) The Prepetition Secured Obligations constitute legal, valid, and binding obligations of the Debtors, (b) no offsets, defenses, or counterclaims to the Prepetition Secured Obligations exist, (c) no portion of the Prepetition Secured Obligations, and no payment or transfers made to or for the benefit of (or obligations incurred for the benefit of) the Prepetition Secured Parties by or on behalf of any of the Debtors prior to the Petition Date under or in connection with the Prepetition Loan Documents, is subject to avoidance, disallowance, reduction, or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law, (d) the Prepetition Loan Documents are valid and enforceable by the Prepetition Agent for the benefit of the Prepetition Secured Parties against each of the applicable Debtors, (e) the Prepetition Liens (1) constitute valid, binding, enforceable, and perfected liens in and to the Prepetition Collateral having the priority set forth in the Prepetition Loan Documents, (2) are not subject, pursuant to the Bankruptcy Code or other applicable law, to avoidance, recharacterization, recovery, subordination, attack, offset, counterclaim, defense, or "claim" (as defined in the Bankruptcy Code) of any kind, (3) are subject and subordinate only to the Prior Permitted Liens[6]);[7] provided, however, that the Debtors do not stipulate that the Prior Permitted Liens are perfected as against any assets of the Debtors that do not constitute Prepetition Collateral, and (4) constitute the legal, valid, and binding obligation of the Debtors, enforceable in accordance with the terms of the applicable Prepetition Loan Documents, (f) the Prepetition Secured Obligations constitute allowed

[6] "Prior Permitted Liens" means Permitted Liens (as defined in the Prepetition Credit Agreement).

[7] Nothing shall prejudice the rights of any party in interest including, but not limited to, the Debtors, the Prepetition Agent and the Prepetition Lenders to challenge the validity, priority, enforceability, seniority, avoidability, perfection or extent of any such liens and/or security interests.

secured claims against the applicable Debtors' estates, and (g) no claim of or cause of action held by the Debtors exists against the Prepetition Secured Parties, or any of their respective agents, in each case in their capacity as such, whether arising under applicable state or federal law, arising out of, based upon, or related to, in whole or in part, the Prepetition Secured Obligations or their prepetition relationship with any Debtor or any affiliate thereof relating to any of the Prepetition Loan Documents or any transaction contemplated thereby; and

(iv) *Cash Collateral*. All of Debtors' cash, including any cash in all deposit accounts and collection accounts, wherever located, comprising proceeds of or otherwise arising from or relating to the Prepetition Collateral, constitutes Cash Collateral of the Prepetition Secured Parties.

G. **DIP Facility Budget**. The initial DIP Budget is attached hereto as **Exhibit 2** (the "DIP Budget"). On or prior to 5:00 p.m. (prevailing Eastern Time), on the Friday of every fourth calendar week (commencing the fourth full calendar week after the week in which the Closing Date occurs), the DIP Borrowers shall deliver to the DIP Agent and the DIP Revolving Lenders an updated 13-week budget and cash flow forecast for the following 13-week period in a form consistent with the DIP Budget (such updated budget, the "Proposed Budget"), which shall be subject to the approval of the DIP Agent and the Required DIP Lenders (such approval not to be unreasonably withheld, conditioned, or delayed) and shall become the DIP Budget for the following Test Period. To the extent that any Proposed Budget is not approved by the DIP Agent and the Required DIP Lenders, the then-existing DIP Budget will remain in effect until replaced by a Proposed Budget that is approved by the DIP Agent; provided that, if the DIP Agent or the Required DIP Lenders have not objected in writing to the Proposed Budget within four business days after receiving the Proposed Budget, such Proposed Budget shall be deemed acceptable to and approved by the DIP Agent and the Required DIP Lenders and become the DIP Budget. The DIP Borrowers

may submit a supplemental updated Proposed Budget from time-to-time subject to the approval of the DIP Agent and the Required DIP Lenders (such approval not to be unreasonably withheld, conditioned, or delayed). The DIP Credit Agreement further provides that the Debtors shall deliver a weekly budget variance report for each one-week period commencing with the second full calendar week after the Closing Date (a "Test Period") on a line item and cumulative basis, pursuant to which the unfavorable variance (as compared to the DIP Budget) of cumulative operating disbursements (which, for the avoidance of doubt, do not include professional fees and expenses) shall not exceed 20% during the Test Period (the "Variance Covenant"); provided that any favorable variance achieved by the Debtors (as compared to the DIP Budget) during any Test Period shall be carried forward and applied to offset any unfavorable variances in subsequent Test Periods for purposes of testing the Variance Covenant; provided, further, that in no event shall the DIP Budget operate as a cap on professional fees and expenses. For the avoidance of doubt, consistent with the DIP Budget, the DIP Loan Documents, or as otherwise agreed to by the DIP Agent (acting at the direction of the Required DIP Lenders), the Debtors shall be authorized to sell, liquidate, and discount inventory in the ordinary course of business. The DIP Budget is an integral part of the DIP Loan Documents and has been relied upon by the DIP Secured Parties to provide the DIP Facility and to consent to this Interim Order.

H. **Issuance of Roll-Up DIP Loans**. As a condition to entry into the DIP Credit Agreement, the extension of credit under the DIP Facility, and the authorization to use the Cash Collateral, each of the DIP Secured Parties and each of the Prepetition Secured Parties has agreed (or not objected) that, (a) upon entry of this Interim Order, and subject only to a Challenge pursuant to paragraph 16 below without any further action by the Debtors or any other party, the Fourteenth Amendment Priority Delayed Draw Term Loans, totaling $66,313,172.05, shall be automatically deemed exchanged and converted into Roll-Up DIP Loans and constitute DIP Obligations (the

"DDTL Roll-Up"), and (b) subject to and upon entry of the Final Order, and subject only to a Challenge pursuant to paragraph 16 below, $108,686,827.95 of the Revolving Loans shall be automatically deemed exchanged and converted on a pro rata basis into Roll-Up DIP Loans and constitute DIP Obligations (the "ABL Roll-Up," and together with the DDTL Roll-Up, the "Roll-Up"), pursuant to the terms of this Interim Order, the Prepetition Credit Agreement, the DIP Loan Documents, and any other documents evidencing the Roll-Up. The Roll-Up DIP Loans shall be repaid in accordance with the applicable DIP Loan Documents following repayment of the DIP New Money Loans consistent with the repayment priority set forth in the Prepetition Credit Agreement. The issuance of the Roll-Up DIP Loans by the DIP Borrowers reflects the Debtors' exercise of prudent business judgment consistent with their fiduciary duties. Each of the Prepetition Secured Parties would not consent to the use of the Prepetition Collateral, including Cash Collateral, or the subordination of the Prepetition Liens to the DIP Liens or the Carve Out, and each of the DIP Secured Parties would not be willing to provide the DIP Facility or extend credit to the Debtors thereunder, without the Roll-Up. The issuance of the Roll-Up DIP Loans will benefit the Debtors and their Estates because it will enable the Debtors to obtain urgently needed financing critical to administering these Chapter 11 Cases and funding their operations, which financing would not otherwise be available. The issuance of the Roll-Up DIP Loans shall be final and irrevocable as to the Debtors but otherwise shall be subject to the Challenge provisions of paragraph 16 of this Interim Order.

I. **Immediate Need for Financing**. The Debtors have an immediate and critical need to obtain the DIP Facility and to use Cash Collateral in order to, among other things, fund these Chapter 11 Cases, pursue potential value-maximizing going-concern sales of the Debtors' businesses, effectuate an orderly wind-down of the Debtors' remaining operations, and to perform their obligations under the TSAs. As a result of the Debtors' financial condition, the use of Cash

Collateral alone is insufficient to fund the Debtors' continued operations and administration of these Chapter 11 Cases. The Debtors' ability to honor employee wages and benefits, pay critical suppliers who are vital to the Debtors' remaining operations, continue the going-concern sale processes for their remaining operations, perform their obligations under the TSAs, and otherwise finance their operations in chapter 11 is essential to the Debtors' ability to preserve and maximize the value of the Debtors' estates for the benefit of all stakeholders. In the absence of the DIP Facility and the authorization by this Court to use Cash Collateral, the Debtors' businesses and estates would suffer immediate and irreparable harm, including, without limitation, being forced to cease operations and abandon their ongoing sale processes to the detriment of all stakeholders.

J. **No Credit on More Favorable Terms**. The DIP Facility is the best source of debtor-in-possession financing available to the Debtors. Based upon the DIP Declarations, and the other pleadings and proceedings of record in the Chapter 11 Cases, the Debtors are unable to obtain sufficient interim and long-term financing from sources other than the DIP Lenders on terms more favorable than under the DIP Credit Agreement and the other DIP Loan Documents, and are not able to obtain unsecured credit allowable as an administrative expense under section 503(b)(1) of the Bankruptcy Code. The Debtors are also unable to obtain secured credit allowable under sections 364(c)(1), 364(c)(2), and 364(c)(3) of the Bankruptcy Code for the purposes set forth in the DIP Credit Agreement without the Debtors (a) providing the Roll-Up, (b) granting to the DIP Agent and the DIP Lenders, subject to the Carve Out, (i) the DIP Superpriority Claims and (ii) the DIP Liens in the DIP Collateral, in each case, under the terms and conditions set forth in this Interim Order and the DIP Loan Documents, and (c) providing the Prepetition Secured Parties the adequate protection as provided herein.

K. **Reasonable; Good Faith**. The DIP Lenders have indicated a willingness to provide postpetition secured financing to the Debtors, solely on the terms and conditions set forth

in this Interim Order and the DIP Loan Documents. After considering all of their alternatives, the Debtors have concluded, in an exercise of their sound business judgment, that the DIP Facility to be provided by the DIP Lenders and the authorization to use the Cash Collateral to be provided by the Prepetition Agent, on behalf of the Prepetition Lenders, represent the best financing presently available to the Debtors. Based upon the pleadings and proceedings of record in the Chapter 11 Cases, (a) the terms and conditions of the DIP Facility are fair and reasonable, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duty, and are supported by reasonably equivalent value and fair consideration, (b) the DIP Facility has been negotiated in good faith and at arm's length among the Debtors, the DIP Agent, and the DIP Lenders, and (c) any credit extended, loans made, and other financial accommodations extended to the Debtors by the DIP Lenders have been extended, issued, or made, as the case may be, in "good faith" within the meaning of section 364(e) of the Bankruptcy Code. The DIP Obligations, the DIP Liens, and the DIP Superpriority Claims shall be entitled to the full protection of section 364(e) of the Bankruptcy Code to the extent provided therein in the event that this Interim Order or any provision hereof is vacated, reversed, or modified on appeal or otherwise, and any liens or claims granted, or payments made, in each case, to the DIP Secured Parties and arising prior to the effective date of any such vacatur, reversal, or modification of this Interim Order shall be governed in all respects by the original provisions of this Interim Order, including entitlement to all of the rights, remedies, privileges, and benefits granted herein.

L. **Consent of Prepetition Agent**. The Prepetition Agent has been directed by the requisite Prepetition Secured Parties to take or refrain from taking actions on behalf of the Prepetition Secured Parties, consistent with the terms of the Prepetition Credit Agreement and this Interim Order (including, without limitation, not to object to the terms hereof), in connection with the Debtors' use of Cash Collateral and the Debtors' entry into the DIP Loan Documents solely in

accordance with, and subject to the terms and conditions in this, Interim Order and the DIP Loan Documents. The Prepetition Secured Parties have consented, are deemed to have consented, or have not objected to (a) the Debtors' use of Cash Collateral and the other Prepetition Collateral and (b) the Debtors' entry into the DIP Loan Documents, solely in accordance with and subject to the terms and conditions in this Interim Order and the DIP Loan Documents. In accordance with the terms of the Prepetition Loan Documents, each individual Prepetition Lender has waived any rights to object to the terms of this Interim Order or the Debtors' entry into the DIP Loan Documents, in such Prepetition Lender's capacity as an individual Prepetition Lender.

M. **Adequate Protection**. The Prepetition Secured Parties are entitled to the adequate protection provided in this Interim Order as and to the extent set forth herein pursuant to sections 361, 362, 363 and 364 of the Bankruptcy Code. Based on the Motion and on the record presented to the Court, the terms of the proposed adequate protection arrangements and of the use of the Prepetition Collateral are fair and reasonable, reflect the Debtors' prudent exercise of business judgment, and constitute reasonably equivalent value and fair consideration for the use of the Prepetition Collateral; provided that, nothing in this Interim Order or the other DIP Loan Documents shall (a) be construed as the affirmative consent by any of the Prepetition Secured Parties for the use of Cash Collateral other than on the terms set forth in this Interim Order and in the context of the DIP Facility authorized by this Interim Order, (b) be construed as a consent by any party to the terms of any other financing or any other lien encumbering the Prepetition Collateral (whether junior or senior), or (c) prejudice, limit, or otherwise impair the rights of any of the Prepetition Secured Parties, to seek new, different, or additional adequate protection for any diminution in value of their interests in the Prepetition Collateral from and after the Petition Date or assert the interests of any of the Prepetition Secured Parties and the rights of any other party in interest to object to such relief are hereby preserved.

N. **Good Cause Shown**. Absent entry of this Interim Order, the Debtors' businesses, properties, and estates will be immediately and irreparably harmed. The relief requested in the Motion is therefore necessary, essential, and appropriate, and its implementation will, among other things, provide the Debtor with necessary liquidity to (a) preserve and maximize value of the Debtors' estates for all stakeholders, including by continuing to pursue a sale process for their remaining assets, and effectuate an orderly winddown of their estates and (b) avoid immediate and irreparable harm to the Debtors, their creditors, their businesses, their employees, and their assets.

O. **No Liability to Third Parties**. The Debtors stipulate and the Court finds that in making decisions to advance loans to the Debtors, in permitting the Debtors to use Cash Collateral, in administering any loans, in accepting the DIP Budget or any future DIP Budget, or in taking any other actions permitted by this Interim Order or the DIP Loan Documents in their respective capacities as DIP Lenders or DIP Agent, none of the DIP Secured Parties shall be deemed to be in control of the operations of the Debtors or to be acting as a "responsible person" or "owner or operator" with respect to the operation or management of the Debtors.

P. **Sections 506(c), 552(b), and Marshaling**. Subject to and upon entry of the Final Order, in light of the subordination of their liens and superpriority administrative claims (a) in the case of the DIP Secured Parties, to the Carve Out and the Permitted Prior Senior Liens and, (b) in the case of the Prepetition Secured Parties, to the Carve Out and the DIP Liens, each of the DIP Secured Parties and the Prepetition Secured Parties, subject only to a Challenge pursuant to paragraph 16 below, is entitled to a waiver of the provisions of section 506(c) of the Bankruptcy Code, all of the rights and benefits of section 552(b) of the Bankruptcy Code, and the "equities of the case" exception shall not apply to any of the DIP Secured Parties or the Prepetition Secured Parties with respect to the proceeds, products, rents, issues, or profits of any of the DIP Collateral or the Prepetition Collateral, and no expenses of administration of the Chapter 11 Cases or any future proceeding that

may result therefrom, including liquidation in bankruptcy or other proceedings under the Bankruptcy Code, may be charged against proceeds, product, offspring, or profits from any of the DIP Collateral or the Prepetition Collateral under section 552(b) of the Bankruptcy Code. Subject to and immediately upon entry of the Final Order, and subject only to a Challenge pursuant to paragraph 16 below, the Debtors and the estates shall be deemed to have irrevocably waived, and to have agreed not to assert, any claim or right under section 552 of the Bankruptcy Code seeking to avoid the imposition of the DIP Liens, Prepetition Liens or the Adequate Protection Liens on any property acquired by any of the Debtors or any of their estates.

Q. **Findings Regarding Corporate Authority**. Each Debtor has all requisite corporate power and authority to execute and deliver the DIP Loan Documents to which it is a party and to perform its obligations thereunder.

R. **Immediate Entry**. Sufficient cause exists for immediate entry of this Interim Order pursuant to Bankruptcy Rule 4001(c)(2).

S. **Permitted Prior Senior Liens**. Nothing contained in this Interim Order is intended to: (i) invalidate, negate, avoid, prime or prejudice the holders of any Permitted Prior Senior Liens; (ii) find or rule that any Permitted Prior Senior Liens (or any other alleged liens, excepting only the Prepetition Liens, subject only to paragraph 16 hereof) are valid, binding, prior, perfected, enforceable, non-avoidable, or senior; or (iii) prejudice the right of any party in interest, including, without limitation, the Debtors, any Committee, the Prepetition Agent, or the DIP Agent, from challenging the validity, enforceability, perfection, extent, or priority of any Permitted Prior Senior Liens (or any other alleged liens or security interests, excepting only the Prepetition Liens, a Challenge to which is subject only to paragraph 16 hereof).

T. **Interim Hearing**. Notice of the Interim Hearing and the relief requested in the Motion has been provided by the Debtors, whether by facsimile, electronic mail, overnight courier,

or hand delivery to certain parties in interest, including the Notice Parties. The Debtors have made reasonable efforts to afford the best notice possible under the circumstances, and no other notice is required in connection with the relief set forth in this Interim Order.

Based on the foregoing, the Motion, and the record made before this Court at the Interim Hearing, and after due consideration and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. **Motion Granted.** The Motion is granted on the terms and conditions set forth in this Interim Order and the DIP Loan Documents. Any objections to the relief granted in this Interim Order that have not previously been withdrawn, waived, settled, or resolved are hereby denied and overruled on the merits. This Interim Order shall become effective immediately upon its entry.

2. **Approval of the DIP Facility and the DIP Loan Documents; Authority Thereunder**. The DIP Facility is hereby approved as set forth herein. The Debtors are hereby expressly and immediately authorized and empowered to execute, deliver, and perform under the DIP Loan Documents, including the DIP Credit Agreement, and such additional documents, instruments, and agreements as may be reasonably required or requested by the DIP Secured Parties to implement the terms or effectuate the purposes of this Interim Order, and to perform the DIP Obligations in accordance with, and subject to, the terms of this Interim Order and the DIP Loan Documents. The Debtors are authorized to comply with and perform all of the terms and conditions contained in the DIP Loan Documents, including the Roll-Up, and to repay amounts borrowed, together with interest and fees thereon, as well as any other outstanding DIP Obligations to the DIP Lenders in accordance with and subject to the terms and conditions set forth in the DIP Loan Documents and this Interim Order.

3. **Authorization to Borrow DIP Facility Loans**. Upon finalizing and executing the DIP Credit Agreement and the other DIP Loan Documents, the DIP Borrowers are immediately

authorized to borrow from the DIP Lenders, and the DIP Guarantors are immediately authorized to guaranty, an initial draw under the DIP Facility of a principal amount of up to $50,000,000 of Revolving DIP Commitments, subject to and in accordance with the terms of this Interim Order and the DIP Credit Agreement.

4. **Authorization to Use Cash Collateral**. The Debtors are hereby authorized to use all Cash Collateral solely in accordance with the terms of the DIP Loan Documents and the DIP Budget (subject to Permitted Variance) and subject to the terms and conditions of this Interim Order.

5. **Collections and Disbursements**. Subject to the Carve Out, from the Petition Date until the DIP Obligations have been paid in full in cash (or, with respect to the DIP Obligations, otherwise satisfied in a manner agreed to by the DIP Agent and all DIP Revolving Lenders), all cash receipts, Cash Collateral, and all proceeds from the sale or other disposition of, or other revenue of any kind attributable to, any DIP Collateral that is now in, or shall hereafter come into, the possession or control of any of the Debtors, or to which any of the Debtors is now or shall hereafter become entitled shall be (a) subject to the DIP Liens and the Adequate Protection Liens (and shall be treated in accordance with this Interim Order and the DIP Loan Documents) and (b) to the extent related to or arising from or in connection with Prepetition Collateral, promptly delivered to the DIP Agent as a repayment of the DIP New Money Loans and the DIP Obligations related thereto (or, to the extent that no such DIP New Money Loans or related DIP Obligations are then outstanding, to be held by the DIP Agent as collateral to be applied against future DIP New Money Loans and related DIP Obligations). The DIP Agent shall enjoy the benefit of all deposit account control agreements. Notwithstanding and without minimizing the force of the foregoing, the Debtors are authorized to enter into, and cause the financial institutions servicing the Debtors' deposit accounts to enter into, such deposit account control agreements and other collateral agreements with the DIP

Agent and such financial institutions as the DIP Agent may reasonably require or, alternatively, the DIP Agent shall be entitled to enjoy the benefit of all control agreements to which the Debtor is a party, as set forth above, without the need to enter into any such new agreements. Notwithstanding anything to the contrary herein, the DIP Agent shall not exercise any rights or remedies under such deposit account control agreements which are otherwise inconsistent with the terms of this Interim Order or the DIP Loan Documents, including, but not limited to, the Debtors' ability to retain funds deposited in accounts subject to deposit account control agreements during any Notice Period and to use such funds in accordance with this Interim Order and the DIP Loan Documents, including for purposes of funding the Carve Out.

6. **Interest on DIP Facility Loans**. The rate of interest to be charged for the DIP Facility Loans and any other extensions of credit to the Debtors pursuant to the DIP Credit Agreement shall be the rates set forth in the DIP Credit Agreement and shall, subject and subordinate to the Carve Out, be payable at the times set forth in the DIP Credit Agreement.

7. **Payment of DIP Fees and Expenses**. Subject to the Carve Out, the Debtors are authorized to pay (a) all fees and interest when due under the DIP Credit Agreement in the amounts set forth in the DIP Credit Agreement or this Interim Order and (b) reasonable, documented out-of-pocket fees, costs, and expenses incurred by the DIP Agent and each of the DIP Lenders in connection with the DIP Facility and all aspects of the Chapter 11 Cases (collectively, the "DIP Lender Advisor Fees and Expenses"), including, without limitation, the reasonable and documented out-of-pocket fees and expenses of legal counsel (including Paul Hastings LLP) and financial advisor (Carl Marks Advisors), and other professionals hired by or on behalf of the DIP Agent or DIP Lenders with the Debtors' consent to such hiring (collectively, the "DIP Lender Professionals"), subject to the review procedures set forth in paragraph 17 of this Interim Order. In addition, the Debtors are hereby authorized to indemnify the DIP Agent and the other DIP Secured

Parties (and their affiliates and each of their respective officers, directors, employees, advisors, and agents) against any liability arising in connection with the DIP Loan Documents, to the extent set forth in the DIP Loan Documents. All such unpaid fees, costs, expenses and indemnities of the DIP Agent and DIP Lenders shall (a) constitute DIP Obligations, (b) be secured by the DIP Collateral, and (c) be afforded all of the priorities and protections afforded to DIP Obligations under this Interim Order and the DIP Loan Documents.

8. **Validity of DIP Loan Documents**. Upon execution and delivery of the DIP Loan Documents, the DIP Loan Documents shall constitute, and are hereby deemed to be the legal, valid, and binding obligations of the Debtors, enforceable against each Debtor in accordance with the terms thereof for all purposes during the Chapter 11 Cases, in any subsequently converted case of any Debtor under chapter 7 of the Bankruptcy Code, or after dismissal of any of the Chapter 11 Cases. Any DIP Facility Loans advanced under the DIP Credit Agreement pursuant to this Interim Order will be made by the DIP Lenders only for the purposes of (a) funding the Carve Out and paying any obligations arising from or related thereto, (b) paying the transaction and postpetition administrative costs, fees, and expenses incurred in connection with the Chapter 11 Cases, (c) paying any and all interest, charges, fees, and reasonable and documented out-of-pocket expenses incurred in connection with the DIP Loan Documents (each as required under the DIP Credit Agreement), (d) providing working capital and for the general corporate purposes of the Debtors, (e) paying the approved fees and expenses of professionals that are retained in the Chapter 11 Cases, (f) repaying and refinancing the Fourteenth Amendment Priority Delayed Draw Term Loans and Revolving Loans in accordance with the Roll-Up, and (g) for such other purposes subject to the reasonable consent of the DIP Agent (acting at the direction of the Required DIP Lenders), including, without limitation, the fees, costs, expenses and indemnities described in paragraph 7

hereof, all subject to and in accordance with the DIP Budget (subject to the Permitted Variance[8]), the DIP Loan Documents, this Interim Order, and any other orders of this Court. No obligation, payment, transfer, or grant of security under the DIP Loan Documents or this Interim Order shall be stayed, restrained, voided, voidable, or recoverable under the Bankruptcy Code or under any applicable non-bankruptcy law, or subject to any defense, reduction, setoff, recoupment, or counterclaim. Except as set forth in this Interim Order and the Final Order, no other superpriority claims shall be granted or allowed in these Chapter 11 Cases without the consent of the DIP Agent (acting at the direction of the Required DIP Lenders).

9. **DIP Superpriority Claims**. In accordance with section 364(c)(1) of the Bankruptcy Code, the DIP Obligations shall constitute superpriority administrative expense claims (collectively, the "DIP Superpriority Claims") against each of the Debtors, without the need to file any proof of claim or request for payment of administrative expenses, with priority in payment over any and all administrative expenses, adequate protection claims, diminution claims and all other claims against the Debtors, now existing or hereafter arising, of any kind whatsoever, including, without limitation, any and all administrative expenses or other claims of the kinds specified or ordered pursuant to any provision of the Bankruptcy Code, including, but not limited to, sections 105, 326, 328, 330, 331, 503(b), 506(c) (subject to, and upon entry of, the Final Order), 507(a), 507(b), 726, 1113, and 1114 of the Bankruptcy Code or otherwise, including those resulting from the conversion of any of the Chapter 11 Cases pursuant to section 1112 of the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment; provided, however, that the DIP Superpriority Claims

[8] For the avoidance of doubt, the Variance Covenant under the DIP Credit Agreement shall only apply to "operating disbursements" as set forth in the DIP Budget, which, for the avoidance of doubt, does not include professional fees or expenses.

shall be subject to the Carve Out and any Permitted Prior Senior Liens. The DIP Superpriority Claims shall, for purposes of section 1129(a)(9)(A) of the Bankruptcy Code, be considered administrative expenses allowed under section 503(b) of the Bankruptcy Code, shall be against each Debtor on a joint and several basis, and shall be payable from and have recourse to all prepetition and postpetition property of the Debtors, including, subject to and upon entry of the Final Order, proceeds of property recovered, whether by judgment, settlement, or otherwise from the Avoidance Actions (collectively, the "Avoidance Proceeds") (but, for the avoidance of doubt, not including the Avoidance Actions themselves).

10. **DIP Priming Liens**. As security for the DIP Obligations, the DIP Agent, on behalf and for the benefit of the DIP Secured Parties, is hereby granted (effective upon the date of this Interim Order, without the necessity of the execution by the Debtors or the filing or recordation of security agreements, lockbox or control agreements, financing statements, or any other instruments, or the taking of any other action to take possession of or control, or otherwise) valid, binding, enforceable, non-avoidable, and automatically and properly-perfected security interests in and liens upon (collectively, the "DIP Liens") all present and after-acquired property of the Debtors of any nature whatsoever (including, without limitation, "Collateral," as defined in the DIP Credit Agreement), including, without limitation, licenses issued by any federal or state regulatory authority, any leasehold or other real property interests and commercial tort claims of the Debtors, all cash and cash equivalents contained in any account maintained by any of the Debtors, and, subject to entry of the Final Order, all Avoidance Proceeds (collectively with all proceeds and products of any or all of the foregoing, the "DIP Collateral"), subject only to the payment of the Carve Out and Permitted Prior Senior Liens[9] (if applicable), which shall consist of:

[9] For purposes of this Interim Order and the DIP Loan Documents, "Permitted Prior Senior Liens" shall mean (a) all valid, perfected, and non-avoidable Prior Permitted Liens that are senior to the Prepetition Liens under the Prepetition

(a) Liens Priming Permitted Prior Senior Liens. Pursuant to section 364(d)(1) of the Bankruptcy Code, a first priority, priming security interest in and lien on all encumbered property of the Debtors and their estates, which shall be senior to any existing liens or claims, subject and subordinated only to valid, perfected and non-avoidable liens on property of the Debtors (including the proceeds of such property) that are Permitted Prior Senior Liens.

(b) Liens Junior to Certain Other Liens. Pursuant to section 364(c)(3) of the Bankruptcy Code, a junior, perfected lien and security interest upon all of the Debtors' right, title and interest in, to and under property of the Debtors and their estates, whether now existing or hereafter acquired, that is subject to any unavoidable Permitted Prior Senior Liens and is not subject to section 552(a) of the Bankruptcy Code.

(c) First Priority Lien on Unencumbered Property. Pursuant to section 364(c)(2) of the Bankruptcy Code, a continuing, enforceable, first priority, fully-perfected lien and security interest upon all of the Debtors' right, title and interest in, to, and under all DIP Collateral that was not encumbered by a validly perfected, enforceable, and non-avoidable security interest or lien as of the Petition Date or a valid security interest perfected subsequent to the Petition Date to the extent permitted by section 546(b) of the Bankruptcy Code (collectively, the "Unencumbered Property"). Subject only to and effective upon entry of the Final Order, Unencumbered Property shall also include the proceeds of estate causes of action under chapter 5 of the Bankruptcy Code and any other avoidance actions under the Bankruptcy Code, whether now existing or hereafter acquired or arising and whether pursuant to federal law or applicable state law, and all proceeds thereof, recoveries related thereto, and property received thereby, whether by judgment, settlement, or otherwise (collectively, "Avoidance Actions").

Credit Agreement and (b) all liens perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code (to the extent valid, perfected, non-avoidable) that are senior in priority to the Prepetition Liens.

(d) Liens Senior to Certain Other Liens. The DIP Liens shall not be subject or subordinate to, (i) subject to and effective upon entry of the Final Order, any lien or security interest that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code or (ii) any intercompany or affiliate liens among the Debtors.

11. **Prepetition Secured Parties' Adequate Protection**. Until the indefeasible repayment in full in cash of the Prepetition Secured Obligations, each of the Prepetition Secured Parties is entitled to adequate protection of its interests in the Prepetition Collateral, solely to the extent of, and in the aggregate amount equal to, any diminution in the value thereof as a result of (a) the provisions of this Interim Order granting priming liens on such Prepetition Collateral to the DIP Agent for the benefit of the DIP Secured Parties, (b) the authorization of the use of Cash Collateral and other Prepetition Collateral, (c) the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code, and/or (d) otherwise (the "Diminution in Prepetition Collateral Value"), pursuant to sections 361(a), 363(c) and 364(d)(1) of the Bankruptcy Code. The Prepetition Agent, on behalf and for the benefit of the Prepetition Lenders, is hereby granted the following (collectively, the "Adequate Protection Obligations"):

(a) Adequate Protection Liens. Valid, enforceable, unavoidable, and fully perfected replacement liens and security interests in the DIP Collateral (collectively, the "Adequate Protection Liens") to the extent of any Diminution in Prepetition Collateral Value, which shall be (i) junior only to the DIP Liens and the Permitted Prior Senior Liens, and (ii) subject to the Carve Out, which Adequate Protection Liens shall rank in the same relative priority and right as do the respective security interests and liens in respect of the Prepetition Credit Agreement as of the Petition Date. The Adequate Protection Liens shall be deemed to be legal, valid, binding, enforceable, perfected liens, not subject to subordination or avoidance, for all purposes in the Chapter 11 Cases. Except as otherwise set forth in this paragraph 11 or otherwise in this Interim Order, the

Adequate Protection Liens shall not be subordinated to or be made *pari passu* with any other lien under section 364(d) of the Bankruptcy Code or otherwise, including any lien or security interest that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code. The Adequate Protection Liens shall be deemed to be perfected automatically upon the entry of this Interim Order, without the need for (x) filing any UCC-1 financing statement, state or federal notice, or other similar instrument or document in any state or public record or office, (y) taking possession or control of any collateral, or (z) further action of any kind (including entry into any security agreements, pledge agreements, control agreements, lockbox agreements, or escrow agreements); provided, however, that upon the request of the Prepetition Agent, the Debtors shall enter into any such agreement and, if the Prepetition Agent determines, in its sole discretion, to file any financing statements, notice of liens, or similar instruments, the Debtors will reasonably cooperate and assist in such filings and the automatic stay shall be modified without the need for further order of this Court solely to allow such filing. Without limiting the foregoing, but subject and subordinate to the rights of the DIP Secured Parties and the holders of any Permitted Prior Senior Liens, in respect of the Adequate Protection Liens, the Prepetition Secured Parties shall enjoy the benefit of all deposit account control agreements and escrow agreements to which any Debtor is a party;

(b) Adequate Protection Superpriority Claims. The Prepetition Agent, on behalf and for the benefit of the Prepetition Secured Parties is hereby granted superpriority administrative expense claims (collectively, the "Adequate Protection Superpriority Claims") under section 507(b) of the Bankruptcy Code against the Debtors' estates, including, subject to and effective upon entry of the Final Order, Avoidance Proceeds, to the extent of any Diminution in Prepetition Collateral Value, which Adequate Protection Superpriority Claims, if any, shall have priority in payment over any and all administrative expenses of the kinds specified or ordered

pursuant to any provision of the Bankruptcy Code, including, but not limited to, Bankruptcy Code sections 105, 326, 328, 330, 331, 503(b), 506(c) (subject to and effective upon entry of the Final Order), 507(a), 507(b), 726, 1113, and 1114, or otherwise and including those resulting from the conversion of any of the Chapter 11 Cases pursuant to section 1112 of the Bankruptcy Code; provided, however, that at all times while such claim is in full force and effect pursuant to this Interim Order, the Adequate Protection Superpriority Claims shall be junior in all respects to the Carve Out and the DIP Superpriority Claims; provided, further, that the Adequate Protection Superpriority Claims shall, respectively among the Prepetition Secured Parties, rank in the same right and priority as do their respective claims with respect to the Prepetition Credit Agreement as of the Petition Date.

(c) Payment of Prepetition Secured Parties' Fees and Expenses. The Debtors shall pay all reasonable and documented out-of-pocket and invoiced fees, costs, and expenses (including reasonable and invoiced legal professional fees and out-of-pocket costs and expenses) of the Prepetition Agent, and one firm of legal professionals per jurisdiction for the Prepetition Agent (such fees and expenses, the "Prepetition Agent Fees and Expenses," and such professionals, the "Prepetition Agent Professionals"), in connection with the negotiation, administration, and monitoring of the Prepetition Credit Agreement and Prepetition Collateral, and in connection with the Chapter 11 Cases, whether arising prior to, on, or after the Petition Date, in each case subject to the review procedures set forth in paragraph 17 hereof.

(d) Section 507(b) Reservation. Subject to the Carve Out, nothing herein shall impair or modify the application of section 507(b) of the Bankruptcy Code in the event that the adequate protection provided to the Prepetition Secured Parties hereunder is insufficient to compensate for any Diminution in Prepetition Collateral Value of their respective interests in the Prepetition Collateral during the Chapter 11 Cases. Nothing contained herein shall be deemed a finding by the Court, or an acknowledgment by any of the Prepetition Secured Parties, that the

adequate protection granted herein does in fact adequately protect any of the Prepetition Secured Parties against any Diminution in Prepetition Collateral Value of their respective interests in the Prepetition Collateral; provided, however, that any such additional section 507(b) claims shall be subject to the same relative priority as such party's Adequate Protection Obligations, as provided in this Interim Order.

12. **No Waiver of Prepetition Credit Agreement Provisions; Reservation of Rights.** Except as otherwise specifically provided in this Interim Order, nothing contained in this Interim Order shall be deemed a waiver or constitute a consent to the modification of any provision contained in the Prepetition Credit Agreement by the Prepetition Secured Parties, including, but not limited to, the incurrence or issuance of any indebtedness by the Debtors, the incurrence of any lien in connection therewith, or the making of any payment by the Debtors.

13. **Rights of Access and Information**. Without limiting the rights of access and information afforded the DIP Secured Parties under the DIP Loan Documents, the Debtors shall be, and hereby are, authorized to afford the representatives, agents, employees, attorneys, financial advisors, and investment bankers of the DIP Secured Parties reasonable access to the Debtors' premises and their books and records in accordance with the DIP Loan Documents and are authorized to reasonably cooperate, consult with, and provide to such persons all such information as the DIP Secured Parties may reasonably request in accordance with the DIP Loan Documents. In addition, the Debtors may authorize their independent certified public accountants, financial advisors, investment bankers, and consultants to cooperate, consult with, and provide to the DIP Secured Parties all such information as may be reasonably requested in accordance with the DIP Loan Documents with respect to the business, results of operations and financial condition of any of the Debtors.

14. **Carve Out**.

(a) As used in this Interim Order, the "Carve Out" means the sum of: (i) all fees required to be paid to the Clerk of the Court and to the Office of the U.S. Trustee under section 1930(a) of title 28 of the United States Code plus interest at the statutory rate (without regard to the notice set forth in (iii) below); (ii) all reasonable and documented fees and expenses up to $75,000 incurred by a trustee under section 726(b) of the Bankruptcy Code (without regard to the notice set forth in (iii) below); (iii) to the extent allowed at any time, whether by interim order, procedural order, or otherwise, all unpaid fees and expenses, including any restructuring fee, sale fee, financing fee, or other success fee not yet due under the applicable professional's engagement letter at the time of delivery of the Carve Out Trigger Notice (collectively, the "Allowed Professional Fees") incurred by or payable to persons or firms retained by the Debtors pursuant to section 327, 328, or 363 of the Bankruptcy Code (the "Debtor Professionals") and the Committee (if any) pursuant to section 328 or 1103 of the Bankruptcy Code (the "Committee Professionals," and together with the Debtor Professionals, the "Professional Persons") at any time before or on the first business day following delivery by the DIP Agent of a Carve Out Trigger Notice, whether allowed by the Court prior to, or after delivery of, a Carve Out Trigger Notice; and (iv) Allowed Professional Fees of Professional Persons in an aggregate amount not to exceed $2,500,000 incurred after the first business day following delivery by the DIP Agent of the Carve Out Trigger Notice, to the extent allowed at any time, whether by interim order, procedural order, or otherwise (the amounts set forth in this clause (iv) being the "Post-Carve Out Trigger Notice Cap," of which the foregoing $2,500,000 shall be funded into the Funded Reserve Account from proceeds from the Interim Draw of the DIP Facility). For purposes of the foregoing, "Carve Out Trigger Notice" shall mean a written notice delivered by email (or other electronic means) by the DIP Agent, acting at the direction of the DIP Lenders, to the Debtors, their

lead restructuring counsel, the U.S. Trustee, and counsel to the Committee (if any), which notice may be delivered following the occurrence and during the continuation of an Event of Default, and acceleration of the DIP Obligations under the DIP Facility, stating that the Post-Carve Out Trigger Notice Cap has been invoked.

(b) Delivery of Weekly Fee Estimates. Not later than 7:00 p.m. (New York time) on the third business day of each week starting with the first full calendar week following the Petition Date, each Professional Person shall deliver to the Debtors a statement setting forth a good-faith estimate of the amount of fees and expenses (collectively, "Estimated Fees and Expenses") incurred during the preceding week by such Professional Person (through Saturday of such week, the "Calculation Date"), along with a good-faith estimate of the cumulative total amount of unreimbursed fees and expenses incurred through the applicable Calculation Date and a statement of the amount of such fees and expenses that have been paid to date by the Debtors (each such statement, a "Weekly Statement"); provided that, within one business day of the occurrence of the Termination Declaration Date, each Professional Person shall deliver one additional statement (the "Final Statement") setting forth a good-faith estimate of the amount of fees and expenses incurred during the period commencing on the calendar day after the most recent Calculation Date for which a Weekly Statement has been delivered and concluding on the Termination Declaration Date. If any Professional Person fails to deliver a Weekly Statement or Final Statement within three calendar days after such Weekly Statement or Final Statement is due, such Professional Person's entitlement (if any) to any funds in the Pre-Carve Out Trigger Notice Reserve with respect to the aggregate unpaid amount of Allowed Professional Fees for the applicable period(s) for which such Professional Person failed to deliver a Weekly Statement or Final Statement covering such period shall be limited to the aggregate unpaid amount of Allowed Professional Fees included in the DIP Budget for such period for such Professional Person.

(c) Carve Out Reserves.

(i) Commencing with the week ended August 1, 2026, and on or before the Thursday of each week thereafter, the Debtors shall utilize cash on hand as of such date and, to the extent insufficient, any available cash thereafter held by any Debtor to fund a reserve in an amount equal to the sum of (A) the greater of (1) the aggregate unpaid amount of all Estimated Fees and Expenses reflected in the Weekly Statements delivered on the immediately prior Wednesday to the Debtors and the DIP Agent and (2) the aggregate amount of unpaid Allowed Professional Fees contemplated to be incurred in the DIP Budget during such week, *plus* (B) the Post-Carve Out Trigger Notice Cap, *plus* (C) an amount equal to the amount of Allowed Professional Fees set forth in the DIP Budget for the two weeks occurring after the most recent Calculation Date. The Debtors shall deposit and hold such amounts in a segregated account maintained by the Debtors in trust (the "Funded Reserve Account") to pay such Allowed Professional Fees (the "Funded Reserves") prior to any and all other claims, and all payments of Allowed Professional Fees incurred prior to the Termination Declaration Date shall be paid first from such Funded Reserve Account.

(ii) On the day on which a Carve Out Trigger Notice is provided by the DIP Agent to the Debtors with a copy to counsel to the Committee (if any) (the "Termination Declaration Date"), the Carve Out Trigger Notice shall constitute a demand to the Debtors to, and the Debtors shall utilize cash on hand as of such date, including cash in the Funded Reserve Account, and, to the extent the foregoing is insufficient, any available cash thereafter held by any Debtor to fund a reserve, to the extent not already funded, in an amount equal to the then unpaid amounts of the Allowed Professional Fees. The Debtors shall deposit and hold such amounts in a segregated account maintained by the Debtors in trust to pay such then unpaid Allowed Professional Fees (the "Pre-Carve Out Trigger Notice Reserve") prior to any other claims. On the Termination Declaration Date, the Carve Out Trigger Notice shall also constitute a demand to the Debtors to utilize all cash on hand as of such

date, including cash in the Funded Reserve Account, and any available cash thereafter held by any Debtor, after funding the Pre-Carve Out Trigger Notice Reserve, to fund a reserve in an amount equal to the Post-Carve Out Trigger Notice Cap. The Debtors shall deposit and hold such amounts in a segregated account maintained by the Debtors in trust to pay such Allowed Professional Fees benefiting from the Post-Carve Out Trigger Notice Cap (the "Post-Carve Out Trigger Notice Reserve," and together with the Pre-Carve Out Trigger Notice Reserve, the "Carve Out Reserves") prior to any and all other claims.

(d) Application of Carve Out Reserves.

(i) All funds in the Pre-Carve Out Trigger Notice Reserve shall be used first to pay the obligations set forth in clauses (a)(i) through (a)(iii) of the definition of Carve Out set forth above (the "Pre-Carve Out Amounts"), but not, for the avoidance of doubt, the Post-Carve Out Trigger Notice Cap, until the Pre-Carve Out Amounts are indefeasibly paid in full. If the Pre-Carve Out Trigger Notice Reserve has not been reduced to zero, subject to paragraph 14(d)(iii) below, all remaining funds shall be distributed first to the DIP Agent on account of the applicable DIP Obligations until indefeasibly paid in full, in cash, all DIP Facility Loans have been terminated, and all Letters of Credit (as defined in the Prepetition Credit Agreement) have been cancelled (or all such Letters of Credit have been fully cash collateralized or otherwise back-stopped, in each case to the satisfaction of the applicable issuer, and thereafter to the Prepetition Secured Parties in accordance with their rights and priorities as of the Petition Date and as otherwise set forth in this Interim Order.

(ii) All funds in the Post-Carve Out Trigger Notice Reserve shall be used first to pay the obligations set forth in clause (a)(iv) of the definition of Carve Out set forth above (the "Post-Carve Out Amounts"). If the Post-Carve Out Trigger Notice Reserve has not been reduced to zero, subject to paragraph 14 (d)(iii) below, all remaining funds shall be distributed first to the DIP Agent on account of the applicable DIP Obligations until indefeasibly paid in full, in cash, all DIP Facility

Loans have been terminated, and all Letters of Credit have been cancelled (or all such Letters of Credit have been fully cash collateralized or otherwise back-stopped, in each case to the satisfaction of the applicable issuer, and thereafter to the Prepetition Secured Parties in accordance with their rights and priorities as of the Petition Date and as otherwise set forth in this Interim Order.

(iii) Notwithstanding anything to the contrary in the DIP Loan Documents or this Interim Order, if either of the Carve Out Reserves is not funded in full in the amounts set forth in paragraph 14(c) hereof, then, any excess funds in one of the Carve Out Reserves following the payment of the Pre-Carve Out Amounts and Post-Carve Out Amounts, respectively (subject to the limits contained in the Post-Carve Out Trigger Notice Cap), shall be used to fund the other Carve Out Reserve, up to the applicable amount set forth in paragraph 14(c) hereof, prior to making any payments to the DIP Agent or the Prepetition Secured Parties, as applicable.

(iv) Notwithstanding anything to the contrary in the DIP Loan Documents, the Prepetition Loan Documents, or this Interim Order, following delivery of a Carve Out Trigger Notice, the DIP Agent, and the Prepetition Secured Parties shall not sweep or foreclose on cash (including cash received as a result of the sale or other disposition of any assets) of the Debtors until the Carve Out Reserves have been fully funded, but shall have a first-lien and automatically perfected security interest in any residual interest in the Carve Out Reserves, with any excess paid to the DIP Agent for application in accordance with the DIP Loan Documents.

(v) Further, notwithstanding anything to the contrary in this Interim Order, (A) disbursements by the Debtors from the Carve Out Reserves shall not constitute DIP Facility Loans or increase or reduce the DIP Obligations, (B) the failure of the Carve Out Reserves to satisfy in full the Allowed Professional Fees shall not affect the priority of the Carve Out with respect to any shortfall (as described below), and (C) in no way shall the DIP Budget, any subsequent approved DIP Budget, Carve Out, Post-Carve Out Trigger Notice Cap or Carve Out Reserves, or any of the

foregoing be construed as a cap or limitation on the amount of the Allowed Professional Fees due and payable by the Debtors. For the avoidance of doubt and notwithstanding anything to the contrary in this Interim Order or the DIP Loan Documents, the Carve Out shall be senior to all liens and claims securing the DIP Obligations, the Adequate Protection Liens, the Adequate Protection Superpriority Claims, the Prepetition Secured Obligations, the DIP Superpriority Claims, and any and all other forms of adequate protection, liens, or claims securing the DIP Obligations and the Prepetition Secured Obligations.

(e) Payment of Allowed Professional Fees Prior to the Termination Declaration Date. Any payment or reimbursement made prior to the occurrence of the Termination Declaration Date in respect of any Allowed Professional Fees shall not reduce the Carve Out.

(f) No Direct Obligation To Pay Allowed Professional Fees. None of the DIP Secured Parties or the Prepetition Secured Parties shall be responsible for the payment or reimbursement of any fees or disbursements of any Professional Person incurred in connection with the Chapter 11 Cases or any successor cases under any chapter of the Bankruptcy Code. Nothing in this Interim Order or otherwise shall be construed to obligate the DIP Agent, the DIP Lenders, the Prepetition Agent, or the Prepetition Lenders in any way, to pay compensation to, or to reimburse expenses of, any Professional Person or to guarantee that the Debtors have sufficient funds to pay such compensation or reimbursement.

(g) Payment of Allowed Professional Fees on or After the Termination Declaration Date. Any payment or reimbursement made on or after the occurrence of the Termination Declaration Date in respect of any Allowed Professional Fees shall permanently reduce the Carve Out on a dollar-for-dollar basis. Any funding of the Carve Out shall constitute part of the DIP Obligations secured by the DIP Collateral and shall otherwise be entitled to the protections granted under this Interim Order, the DIP Loan Documents, the Bankruptcy Code, and applicable

law.

15. **Limitation on Use of DIP Financing Proceeds and Collateral**. Subject to the written consent of the DIP Agent, no portion of the proceeds of the DIP Facility, the Collateral, including any Cash Collateral, the Carve Out, and no disbursements set forth in the DIP Budget, may be used by the DIP Loan Parties or any other party in interest or their representatives for the payment of professional fees, disbursements, costs, or expenses incurred by any person in connection with (a) incurring Indebtedness (as defined in the Prepetition Credit Agreement) except to the extent permitted under the DIP Loan Documents, (b) preventing, hindering, or delaying any of the DIP Agent's, the DIP Lenders', the Prepetition Agent or the Prepetition Lenders (in the case of each of the foregoing, in their respective capacities as such) enforcement or realization upon, or exercise of rights in respect of, any of the Collateral once an Event of Default has occurred and after the Notice Period, (c) objecting, challenging, or contesting in any manner, or raising any defenses to, the validity, extent, amount, perfection, priority, or enforceability of any of the Obligations under the DIP Facility, the DIP Liens, the Prepetition Liens, the Prepetition Collateral, or any other rights or interest of any of the DIP Agent, the DIP Lenders, the Prepetition Agent or the Prepetition Lenders (in the case of each of the foregoing, in their respective capacities as such); provided that the foregoing shall not prohibit the Debtors from exercising any rights reserved to them under this Interim Order, (d) asserting, commencing, or prosecuting any claims or causes of action, including, without limitation, any actions under chapter 5 of the Bankruptcy Code, against any of the DIP Agent, the DIP Lenders, the Prepetition Agent, or the Prepetition Lenders, or any of their respective agents, attorneys, advisors, professionals, officers, directors, or employees (in the case of each of the foregoing, in their respective capacities as such), or (e) (i) asserting, joining, commencing, supporting, investigating, or prosecuting any action for any claim, counterclaim, action, cause of action, proceeding, application, motion, objection, defense, or other contested matter seeking any

order, judgment, determination, or similar relief against, or adverse to the material interests of the DIP Agent, the DIP Lenders, the Prepetition Agent, or the Prepetition Lenders arising out of, in connection with, or relating to the DIP Facility, the DIP Loan Documents, or the transactions contemplated hereunder or thereunder or (ii) asserting, joining, commencing, supporting, or prosecuting any action for any claim, counterclaim, action, cause of action, proceeding, application, motion, objection, defense, or other contested matter seeking any order, judgment, determination, or similar relief against, or materially adverse to the interests of the Prepetition Agent or the Prepetition Lenders arising out of, in connection with, or relating to the Prepetition Credit Agreement or the financing transactions contemplated thereunder, and in the case of (e)(i) and (e)(ii) of this paragraph, including, without limitation, (A) any action arising under the Bankruptcy Code with respect to or relating to the Obligations under the DIP Facility, the DIP Liens, the Prepetition Credit Agreement, or the Prepetition Liens, as applicable, (B) any so-called "lender liability" claims and causes of action with respect to or relating to the Obligations under the DIP Facility, the DIP Liens, the Prepetition Credit Agreement, or the Prepetition Liens, as applicable, (C) any action with respect to the validity and extent of the Obligations under the DIP Facility, the Prepetition Credit Agreement, any superpriority claims granted in connection with the foregoing, or the validity, extent, perfection, and priority of the DIP Liens, or the Prepetition Liens, (D) any action seeking to invalidate, set aside, avoid, reduce, set off, offset, recharacterize, subordinate (whether equitable, contractual, or otherwise), recoup against, disallow, impair, raise any defenses, cross-claims, or counterclaims, or raise any other challenges under the Bankruptcy Code or any other applicable domestic or foreign law or regulation against, or with respect to, the DIP Liens, the Prepetition Liens, or any superpriority claims granted in connection with the foregoing in whole or in part, (E) appeal or otherwise challenge this Interim Order, the Final Order, the DIP Loan Documents, or any of the transactions contemplated herein or therein (provided that nothing herein shall limit the

Committee's rights to be compensated for any objection to the Final Order, and any allowed fees and expenses of the Committee Professionals with respect thereto may be paid using any of the proceeds of the DIP Facility, the DIP Collateral, the Prepetition Credit Agreement, and the Prepetition Liens, including Cash Collateral, or the Carve Out, and/or (F) any action that has the effect of preventing, hindering, or delaying (whether directly or indirectly) the DIP Agent or the DIP Lenders, in respect of their liens and security interests in the DIP Collateral or any of their rights, powers, or benefits hereunder or in the DIP Loan Documents; provided, however, that prior to the Investigation Termination Date, such collateral proceeds and loans under the DIP Loan Documents may be used for allowed fees and expenses, in an amount not to exceed $50,000 (the "Investigation Fund"), incurred solely by the Committee, if any, to investigate, but not to prepare, initiate, litigate, prosecute, object to, or otherwise Challenge, the claims, causes of action, adversary proceedings, or other litigation against the Prepetition Secured Parties solely concerning the legality, validity, priority, perfection, enforceability, or extent of the claims, liens, or interests held by or on behalf of the Prepetition Secured Parties related to the Prepetition Secured Obligations. For the avoidance of doubt, nothing in this paragraph 15 shall prevent or limit the Debtors or the Debtor Professionals, or any other party interest, from being heard on whether an Event of Default has occurred and is continuing.

16. **Investigation Rights**. The Committee, if any, shall have until sixty (60) calendar days from the date of the Committee's appointment (if appointed) and all other non-Debtor parties in interest shall (including a trustee, if appointed or elected prior to the Investigation Termination Date) shall have sixty (60) calendar days following entry of this Interim Order (each, as applicable, the "Investigation Termination Date") to investigate the validity, extent, priority, perfection, and enforceability of the Prepetition Liens and the Prepetition Secured Obligations (in addition to obtaining the requisite standing), and to assert any other claims or causes of action against the

Prepetition Secured Parties. If any Committee, or any non-Debtor party in interest hereafter granted authority and standing by this Court, determines that there may be a claim or cause of action against the Prepetition Secured Parties by the Investigation Termination Date, then upon five (5) days' written notice to the Debtors and the Prepetition Secured Parties, such Committee, or other non-Debtor party in interest hereafter granted authority and standing by this Court, shall be permitted to file and prosecute an objection or claim related thereto (each, a "Challenge"), and shall have only until the applicable Investigation Termination Date to file such objection or claim (or otherwise initiate an appropriate action on behalf of the Debtors' estates) setting forth the basis of any such challenge, claim or cause of action; provided, however, that nothing contained in the DIP Loan Documents or this Interim Order shall be deemed to confer standing on any Committee or any other non-Debtor party in interest to commence a Challenge, and such Committee or other non-Debtor party in interest shall be required to move for standing and satisfy the applicable standard for obtaining standing to pursue estate causes of action. If the Chapter 11 Cases are converted to chapter 7, or a chapter 11 trustee is appointed or elected prior to the expiration of the Investigation Termination Date, the Investigation Termination Date shall be extended for a period of sixty (60) calendar days from the date of such appointment or election solely with respect to any such trustee. If a Challenge is not filed on or before the Investigation Termination Date, then, without further action by any party or any further order of this Court: (a) the agreements, acknowledgements and stipulations contained in paragraph F of this Interim Order and its subparagraphs shall be deemed to be immediately and irrevocably binding on the Debtors and the Debtors' estates, the Committee, and all parties in interest, and any and all successors-in-interest thereto shall thereafter be forever barred from bringing any Challenge; (b) the liens and security interests of the Prepetition Secured Parties shall be deemed to constitute valid, binding, enforceable and perfected liens and security interests not subject to avoidance or disallowance pursuant to the Bankruptcy Code or applicable non-

bankruptcy law; and (c) the Prepetition Secured Obligations shall be deemed to be finally allowed claims for all purposes in the Chapter 11 Cases and any subsequent chapter 7 cases, in the amounts set forth in paragraph F of this Interim Order and its subparagraphs and shall not be subject to challenge by any party in interest as to validity, priority or otherwise. The Prepetition Agent and Prepetition Lenders shall cooperate in all reasonable requests for information in order to assist the Committee in its investigation under this paragraph 16. Upon a successful Challenge, the Court may fashion an appropriate remedy, including, without limitation, unwinding or disallowing all or a portion of the Roll-Up DIP Loans, if appropriate. Notwithstanding anything to the contrary herein: (i) if any such Challenge is timely commenced, the stipulations contained in paragraph F of this Interim Order and its subparagraphs shall nonetheless remain binding on all parties in interest and preclusive except with respect to the party asserting the Challenge and to the extent that such stipulations are expressly and successfully challenged in such Challenge; and (ii) the Prepetition Secured Parties reserve all of their rights to contest on any grounds any Challenge. For the avoidance of doubt, any trustee appointed or elected in these Chapter 11 Cases shall, until the Investigation Termination Date (and thereafter, if a Challenge is commenced on or prior to the Investigation Termination Date) and for the duration of any adversary proceeding or contested matter commenced pursuant to this paragraph with respect to a Challenge (whether commenced by such trustee or commenced by any other non-Debtor party in interest on behalf of the Debtors' estates), be deemed to be a party other than the Debtors and shall not, for purposes of such adversary proceeding or contested matter, be bound by the acknowledgments, admissions, confirmations and stipulations of the Debtors in this Interim Order.

17. **Payment of Certain Fees and Expenses**. Subject to the review procedures set forth in this paragraph 17, payment of all DIP Lender Advisors Fees and Expenses and Prepetition Agent Fees and Expenses shall not be subject to Court approval of the U.S. Trustee fee guidelines,

and none of the DIP Lender Professionals and Prepetition Agent Professionals shall be required to file with respect thereto any interim or final fee application with this Court. The DIP Lender Professionals and the Prepetition Agent Professionals shall provide copies of summary invoices (which shall be sufficiently detailed to enable a determination as to the reasonableness of such fees and expenses, but shall not be required to contain time entries (subject to the Review Parties' rights to request additional detail of such services provided), and which may be modified to delete any information subject to the attorney-client privilege, any information constituting attorney work product, or any other confidential information, and the provision of the summary invoices shall not constitute any waiver of the attorney client privilege or of any benefits of the attorney work product doctrine) to the Debtors, the U.S. Trustee, the DIP Agent, the Prepetition Agent, and counsel to the Committee (if any) (together, the "Review Parties"). If any Review Party objects to the reasonableness of the fees and expenses of the DIP Lender Professionals or Prepetition Agent Professionals and cannot resolve such objection within ten (10) business days of receipt of such invoices (the "Review Period"), then such party shall file with this Court and serve on such professional an objection (the "Fee Objection") limited to the issue of the reasonableness of such fees and expenses, and any failure by any such party to file a Fee Objection within the Review Period shall constitute a waiver of any right of such party to object to the applicable invoice. The Debtors shall, upon expiration of the Review Period, pay in accordance with the terms and conditions of this Interim Order (a) the undisputed fees, costs, and expenses reflected on any invoice to which a Fee Objection has been timely filed and (b) all fees, costs, and expenses on any invoice in which no Fee Objection has been timely filed.

18. **Protection of DIP Lenders' Rights**. So long as there are any DIP Facility Loans or DIP Obligations outstanding or the DIP Lenders have any outstanding commitments under the DIP Credit Agreement, the Prepetition Secured Parties (a) shall not take any action to foreclose

upon or recover in connection with their respective liens and security interests, other agreements, or operation of law of this Interim Order, or otherwise exercise remedies against any DIP Collateral, except to the extent authorized herein or by any other order of this Court, (b) shall be deemed to have consented to any release of DIP Collateral authorized under the DIP Loan Documents, (c) shall not file any further financing statements, trademark filings, copyright filings, patent filings, mortgages, notices of lien or similar instruments, enter into any control agreement, or otherwise take any action to perfect their security interests in the DIP Collateral unless, solely as to this clause (c), the DIP Agent (acting at the direction of the Required DIP Lenders) files financing statements or other documents to perfect the liens granted pursuant to this Interim Order, or as may be required by applicable state law to continue the perfection of valid and unavoidable liens or security interests as of the Petition Date, and (d) shall not seek to terminate or modify the use of Cash Collateral.

19. **Further Assurances**. The Debtors shall use reasonable best efforts to execute and deliver to the DIP Agent, the DIP Lenders, the Prepetition Secured Parties all such agreements, financing statements, instruments, and other documents as the DIP Agent, DIP Lenders, and Prepetition Secured Parties may reasonably request to evidence, confirm, validate, or perfect the DIP Liens or the Adequate Protection Liens granted pursuant hereto. Further, the Debtors are authorized to do and perform all acts, to make, execute and deliver all instruments and documents, and to pay all fees and expenses that may be reasonably required or necessary for the Debtors' performance under the DIP Loan Documents, including, without limitation, (a) the execution of the DIP Loan Documents and (b) the payment of the fees, costs and other expenses described in the DIP Loan Documents as and when such become due. If the DIP Agent or the Prepetition Agent hereafter reasonably requests that the Debtors execute and deliver to the DIP Agent or the Prepetition Agent financing statements, security agreements, collateral assignments, or other instruments and documents considered by such agent to be reasonably necessary or desirable to

further evidence the perfection of the DIP Liens or the Adequate Protection Liens, as applicable (each, a "Perfection Action"), the Debtors are hereby authorized to execute and deliver such financing statements, security agreements, collateral assignments, instruments, and documents, and the DIP Agent or the Prepetition Agent is hereby authorized to file or record such documents in its discretion without seeking modification of the automatic stay under section 362 of the Bankruptcy Code, in which event all such documents shall be deemed to have been filed or recorded at the time and on the date of entry of this Interim Order.

20. **506(c) Waiver**. Subject to and upon entry of the Final Order, except to the extent of the Carve Out, no costs or expenses incurred the preservation, protection, enhancement, or realization of the DIP Collateral or the Prepetition Collateral in connection with the Chapter 11 Cases or any future proceeding that may result therefrom shall be charged against or recovered from any DIP Collateral or Prepetition Collateral (as applicable) under section 506(c) of the Bankruptcy Code or otherwise without the prior written consent of the DIP Agent (acting on behalf of the Required DIP Lenders) or the Prepetition Agent (acting on behalf of the Required Prepetition Lenders), as applicable.

21. **Marshaling Waiver**. Subject to and upon entry of the Final Order, in no event shall the DIP Secured Parties or the Prepetition Secured Parties be subject to the equitable doctrine of "marshaling" or any other similar doctrine with respect to the DIP Collateral or the Prepetition Collateral (as applicable); provided that, for the avoidance of doubt, all liens securing the DIP Obligations and the Prepetition Secured Obligations shall be subject to and subordinate in all respects to the Carve Out; provided, further, that the DIP Secured Parties and the Prepetition Secured Parties shall use commercially reasonable efforts to first obtain recoveries from the DIP Collateral other than Avoidance Proceeds.

22. **Restrictions on Granting Postpetition Liens**. Except as expressly permitted by

this Interim Order or the DIP Loan Documents, the Debtors will not, at any time during the Chapter 11 Cases, grant mortgages, security interests or liens in the DIP Collateral (or any portion thereof) having a priority senior to the DIP Liens and Adequate Protection Liens to any other parties pursuant to section 364(d) of the Bankruptcy Code or otherwise.

23. **Automatic Effectiveness of Liens**. Automatically upon entry of this Interim Order, the DIP Liens and the Adequate Protection Liens shall be deemed to be valid, perfected, enforceable, nonavoidable and effective by operation of law, and not subject to challenge as of the Petition Date, without the need for (a) executing any control agreements, landlord waivers (unless required by law or contract), mortgagee waivers, bailee waivers, or warehouseman waivers; (b) giving, filing, or recording of any UCC-1 financing statements, mortgages, deeds of trust, leasehold mortgages, notices to account debtors or other third parties, notices of lien or similar instruments in any jurisdiction (including filings with the United States Patent and Trademark Office, the United States Copyright Office or any similar agency in respect of trademarks, copyrights, trade names or patents with respect to intellectual property), (c) taking possession or control of any collateral, or (d) further action of any kind (including execution of any security agreements, pledge agreements, control agreements, lockbox agreements or escrow agreements).

24. **DIP Termination Events**. The DIP Obligations shall accelerate and become immediately due and payable in full in accordance with the DIP Loan Documents and the Revolving DIP Commitments shall terminate, in each case, without further notice or action by the Court following the earliest to occur of any of the following, unless waived or extended (as applicable) in writing by the DIP Agent (at the direction of the Required DIP Lenders), which may be by email from counsel (each, a "DIP Termination Event"), upon: (a) subject to the expiration of any cure or grace periods under the DIP Loan Documents, as applicable, and the Notice Period and procedures described in paragraph 25 hereof, the occurrence and during the continuation of any Event of

Default; or (b) the occurrence of the Maturity Date.

25. **Exercise of Remedies**.

(a) The DIP Agent (at the direction of the Required DIP Lenders) shall promptly provide notice to counsel to the DIP Lenders, counsel to the Committee (if any), and counsel to the Debtors of the occurrence of any DIP Termination Event arising under paragraph 24 of this Interim Order. Upon the occurrence and during the continuation of a DIP Termination Event arising under paragraph 24(a) of this Interim Order and following the giving of not less than five (5) business days' advance written notice by counsel for the DIP Agent, which may be by email (such period, the "Notice Period," and such notice, the "Enforcement Notice"), to counsel to the Debtors, the U.S. Trustee, counsel to the DIP Lenders, and counsel to the Committee, if any, subject to the obligations with respect to the Carve Out and subject to paragraph 25(b) hereof, (i) the DIP Agents, acting at the direction of the Required DIP Lenders (as set forth in the DIP Loan Documents) may exercise any rights and remedies against the DIP Collateral available to them under this Interim Order, the DIP Loan Documents, and applicable non-bankruptcy law, and the DIP Secured Parties may exercise such rights available to them under the DIP Loan Documents or this Interim Order, (ii) the Prepetition Secured Parties may exercise any rights and remedies to satisfy the Prepetition Secured Obligations and Adequate Protection Obligations, subject to the DIP Obligations, the DIP Superpriority Claims, the Permitted Prior Senior Liens (if any), and consistent with the Prepetition Loan Documents and the relative rights and priorities as set forth therein, including, without limitation, to charge interest at the default rate under the DIP Credit Agreement, and (iii) the commitment of each DIP Lender to make DIP Facility Loans will be terminated to the extent any such commitment remains under the DIP Facility; provided, that prior to the exercise of any right set forth in clauses (i) through (iii) of this Paragraph 25(a), the Required DIP Lenders and the DIP Secured Parties shall be required to file a motion with the Court seeking emergency relief from the automatic stay pursuant to section 362 of

the Bankruptcy Code (the "Stay Relief Motion") on not less than five (5) business days' notice to the Debtors, the U.S. Trustee, and any Committee appointed by the U.S. Trustee (which may run concurrently with the Notice Period), and the Court shall schedule an emergency hearing thereon at its earliest opportunity without the necessity of a motion to shorten. At the hearing on the Stay Relief Motion, the Court may fashion an appropriate remedy upon a determination that an Event of Default has occurred and is continuing; provided that, the automatic stay shall remain in effect until the Court has an opportunity to rule on the Stay Relief Motion.

(b) Upon delivery of an Enforcement Notice, each of the DIP Secured Parties, the Prepetition Secured Parties, the Debtors, and the Committee (if any), as applicable, consent to the hearing on the Stay Relief Motion on an expedited basis to consider (i) whether a DIP Termination Event has occurred and (ii) any appropriate relief (including, without limitation, the Debtors' non-consensual use of Cash Collateral), as determined by the Court; provided that if a request for such hearing is made prior to the end of the Notice Period, then the Notice Period shall be continued until the Court hears and rules with respect thereto. During the Notice Period, notwithstanding anything to the contrary set forth in paragraph 25(a) hereof, (i) the DIP Secured Parties may not exercise any default rights or remedies to satisfy the DIP Obligations, including any default rights and remedies against the DIP Collateral or any of the default rights set forth in paragraph 25(a) hereof, (ii) the Prepetition Secured Parties may not exercise any default rights or remedies to satisfy the Prepetition Secured Obligations and the Adequate Protection Obligations, including any rights or remedies against the Prepetition Collateral or any of the default rights set forth in paragraph 25(a) hereof, and (iii) the Debtors shall continue to have the right to use the proceeds of the DIP Facility (the "DIP Proceeds") and the Cash Collateral solely to fund (i) payroll, taxes, statutory obligations, and other operating expenses that are critically necessary to keep the Debtors' businesses operating or that have been consented to by the Required DIP Lenders (which consent shall not be unreasonably

withheld or delayed), and (ii) the Carve Out; provided that the DIP Lenders shall not be obligated to make any DIP New Money Loans during the Notice Period. At the end of the Notice Period, unless the Court has entered an order to the contrary or otherwise fashioned an appropriate remedy, the Debtors' right to use the DIP Proceeds and the Cash Collateral shall immediately cease, unless otherwise provided herein, and the DIP Secured Parties and the Prepetition Secured Parties, as applicable, shall have the rights set forth in the paragraph immediately above, without the necessity of seeking relief from the automatic stay.

26. **Credit Bid**. Subject to any bidding or auction procedures subsequently approved by the Court:

(a) subject to the Permitted Prior Senior Liens, the DIP Agent, at the direction of the Required DIP Lenders, shall have the right to credit bid up to the full amount of the outstanding DIP Facility Loans (including any Roll-Up DIP Loans) in any sale of the DIP Collateral under or pursuant to (i) section 363 of the Bankruptcy Code, (ii) a plan of reorganization or a plan of liquidation under section 1129 of the Bankruptcy Code, or (iii) a sale or disposition by a chapter 7 trustee for any Debtor under section 725 of the Bankruptcy Code; and in each of case (i), (ii) and (iii), such credit bid by the DIP Agent shall be binding upon all DIP Lenders. The DIP Secured Parties shall have the absolute right to assign, sell, or otherwise dispose of their respective rights to credit bid in connection with any credit bid by or on behalf of the DIP Secured Parties to any acquisition entity or joint venture formed in connection with such bid; provided that, prior to any such assignment, sale, or other disposition, the applicable DIP Secured Party shall provide reasonable advance notice to the Debtors of such proposed transfer.

(b) the Prepetition Agent, at the direction of the Required Prepetition Lenders shall have the right to credit bid up to the full amount of the Prepetition Loans, on behalf of the Prepetition Lenders, in any sale of the Prepetition Collateral, subject to the satisfaction of all DIP

Obligations and all obligations secured by the Permitted Prior Senior Liens, under or pursuant to (i) section 363 of the Bankruptcy Code, (ii) a plan of reorganization or a plan of liquidation under section 1129 of the Bankruptcy Code, or (iii) a sale or disposition by a chapter 7 trustee for any Debtor under section 725 of the Bankruptcy Code; and in each of case (i), (ii), and (iii), such credit bid by the Prepetition Agent shall be binding upon all Prepetition Lenders. The Prepetition Secured Parties shall have the absolute right to assign, sell, or otherwise dispose of their respective rights to credit bid in connection with any credit bid by or on behalf of the Prepetition Secured Parties to any acquisition entity or joint venture formed in connection with such bid; provided that, prior to any such assignment, sale, or other disposition, the applicable Prepetition Secured Party shall provide reasonable advance notice to the Debtors of such proposed transfer.

27. **Proofs of Claim**. None of the DIP Agent, the other DIP Secured Parties, or the Prepetition Secured Parties shall be required to file proofs of claim in any of the Chapter 11 Cases or any successor cases for any claim allowed herein, and the stipulations in paragraph F of this Interim Order shall be deemed to constitute a timely filed proof of claim with respect to the Prepetition Secured Obligations against each of the applicable Debtors in the Chapter 11 Cases. Notwithstanding any order entered by the Court in relation to the establishment of a bar date in any of the Chapter 11 Cases or any successor cases to the contrary, the DIP Agent, on behalf of the DIP Secured Parties, and the Prepetition Agent, on behalf of itself and the Prepetition Secured Parties, are authorized and entitled, but not directed or required (except as the DIP Agent may be directed by the Required DIP Lenders and the Prepetition Agent, as may be directed by the Prepetition Secured Lenders), to file (and amend and/or supplement, as the respective agents see fit) a master proof of claim on account of any and all of the respective claims arising under the DIP Facility or the Prepetition Credit Facility, as applicable (the "Master Proof of Claim"). For administrative convenience, any Master Proof of Claim authorized herein may be filed in the case of Debtor RNDC

with respect to all amounts asserted in such Master Proof of Claim, and such Master Proof of Claim shall be deemed to be filed and asserted by the applicable entity or entities against every Debtor asserted to be liable for the applicable claim. For the avoidance of doubt, the provisions set forth in this paragraph and any Master Proof of Claim filed pursuant to the terms hereof are intended solely for the purpose of administrative convenience and shall not affect the substantive rights of any party in interest or their respective successors in interest, including, without limitation, the numerosity requirements set forth in section 1126 of the Bankruptcy Code. The DIP Agent and other Prepetition Secured Parties shall not be required to attach any instruments, agreements, or other documents evidencing the obligations owing by each of the Debtors to the DIP Agent and other DIP Secured Parties or the Prepetition Secured Parties, as applicable, which instruments, agreements, or other documents will be provided upon written request to counsel to the DIP Agent, the other DIP Secured Parties, or the Prepetition Secured Parties, as applicable. Any order entered by the Court in relation to the establishment of a bar date for any claim (including any administrative claim) in any of the Chapter 11 Cases or any successor cases shall not apply to the DIP Agent, the other DIP Secured Parties, or the Prepetition Secured Parties. For the avoidance of doubt, none of the DIP Agent, the other DIP Secured Parties, or Prepetition Secured Parties will be required to file any request for allowance and/or payment of any administrative expenses, and this Interim Order shall be deemed to constitute a timely filed request for allowance and/or payment of any Prepetition Secured Obligations constituting administrative expenses or any DIP Obligations, as applicable.

28. **Binding Effect**. To the extent permitted by applicable law and subject to paragraph 16 of this Interim Order, the provisions of this Interim Order shall be binding upon and inure to the benefit of the DIP Secured Parties, the Prepetition Secured Parties, the Debtors, any Committee appointed in these Chapter 11 Cases, and each of their respective successors and assigns (including any chapter 7 or chapter 11 trustee hereinafter appointed or elected for the estate of the

Debtors, an examiner appointed pursuant to section 1104 of the Bankruptcy Code or any other fiduciary appointed as a legal representative of any of the Debtors or with respect to the property of the estate of any of the Debtors). To the extent permitted by applicable law, this Interim Order shall bind any trustee hereafter appointed for the estate of any of the Debtors, whether in these Chapter 11 Cases or in the event of the conversion of any of the Chapter 11 Cases to a liquidation under chapter 7 of the Bankruptcy Code. Such binding effect is an integral part of this Interim Order; provided, however, that, for the avoidance of doubt, the DIP Secured Parties and the Prepetition Secured Parties shall have no obligation to make any loan, permit the use of DIP Collateral or Prepetition Collateral (including Cash Collateral) or extend any financing to any chapter 11 trustee or chapter 7 trustee or similar responsible person appointed for the estate of any Debtor in the Chapter 11 Cases or any successor case.

29. **Survival**. Except as expressly provided in this Interim Order in the DIP Loan Documents, the provisions of this Interim Order and the DIP Loan Documents, any actions taken pursuant hereto or thereto, shall survive the entry of any order: (a) confirming any plan of reorganization or liquidation in any of the Chapter 11 Cases (and, to the extent not satisfied in full in cash, the DIP Obligations shall not be discharged by the entry of any such order, pursuant to section 1141(d)(4) of the Bankruptcy Code, each of the Debtors having hereby waived such discharge); (b) converting any of the Chapter 11 Cases to a chapter 7 case; or (c) dismissing any of the Chapter 11 Cases, and the terms and provisions of this Interim Order as well as the DIP Superpriority Claims and the DIP Liens in the DIP Collateral granted pursuant to this Interim Order and the DIP Loan Documents (and with respect to the entry of any order as set forth in (b) or (c) herein, the Adequate Protection Liens and Adequate Protection Superpriority Claims) shall continue in full force and effect notwithstanding the entry of any such order until the DIP Obligations and the Adequate Protection Superpriority Claims are indefeasibly paid in full. Such claims and liens

shall maintain their priority as provided by this Interim Order and the DIP Loan Documents, and to the maximum extent permitted by law, until all of the DIP Obligations are indefeasibly paid in full in cash (or, with respect to the DIP Obligations, otherwise satisfied in a manner agreed to by the DIP Agent and all DIP Revolving Lenders).

30. **Reallocation**. For the avoidance of doubt, in the event that it is determined by this Court that the Prepetition Secured Parties did not maintain valid, perfected, and enforceable liens on the Prepetition Collateral, the Court reserves the right to reallocate any payments made to the Prepetition Secured Parties, and modify any liens and claims granted pursuant to this Interim Order, including the grant of adequate protection to the Prepetition Secured Parties.

31. **Amendments and Modifications of DIP Loan Documents**. Each of the Debtors is expressly authorized and empowered to enter into amendments or other modifications of the DIP Loan Documents without further order of the Court, in each case, in such form as the DIP Agent and the DIP Lenders may agree with the Debtors in writing; provided that notice of any modification or amendment shall be provided by the Debtors to the U.S. Trustee, counsel to the Prepetition Agent, and counsel to any Committee, which parties may object to such modification or amendment, in writing, within five (5) business days from the date of the transmittal of such notice (which, to the extent such contact information for such parties is known to the Debtors, shall be transmitted by fax or email, and, if not known, by overnight mail); provided, further, that, notwithstanding the foregoing, (a) any material modification of the DIP Loan Documents shall require Court approval and (b) if such objection is timely provided, then such modification or amendment shall be permitted only pursuant to an order of the Court, the entry of which may be sought on an expedited basis. For the avoidance of doubt, the extension of a Milestone, modifications to the DIP Budget, or waiver of compliance with covenants in the DIP Loan Documents, in each case in accordance with this Interim

Order, the Final Order, or the DIP Loan Documents, shall not constitute a material amendment, modification, waiver, or supplement to the DIP Loan Documents.

32. **Insurance Policies**. Upon entry of this Interim Order and to the fullest extent provided by applicable law, the DIP Agent and the DIP Secured Parties shall be, and shall be deemed to be, without any further action or notice, named as additional insureds and loss payees, as applicable, on each insurance policy maintained now or in the future by any of the Debtors which in any way relates to the DIP Collateral; provided that the DIP Agent shall distribute any proceeds recovered or received in respect of any insurance policies, subject to the Carve Out and in accordance with the terms of the DIP Loan Documents and this Interim Order. Notwithstanding the foregoing, the Debtors are authorized to take any actions that the DIP Agent (acting at the direction of the Required DIP Lenders) shall reasonably request, in its sole and absolute discretion, to have the DIP Agent, on behalf of the DIP Secured Parties, added as an additional insured and loss payee on each insurance policy.

33. **Limits on Lender Liability**. Nothing in this Interim Order, any of the DIP Loan Documents, or any other documents related thereto shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Secured Parties or the Prepetition Secured Parties of any liability for any claims arising from any activities by the Debtors in the operation of their businesses or in connection with the administration of these Chapter 11 Cases. The DIP Secured Parties shall not, solely by reason of having made loans under the DIP Facility, be deemed in control of the operations of the Debtors or to be acting as a "responsible person" or "owner or operator" with respect to the operation or management of the Debtors (as such terms, or any similar terms, are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 et seq., as amended, or any similar federal or state statute). Nothing in this Interim Order or the DIP Loan Documents shall in any way be construed or interpreted to impose

or allow the imposition upon the DIP Secured Parties or any of the Prepetition Lenders of any liability for any claims arising from the prepetition or postpetition activities of any of the Debtors.

34. **Release of Claims and Defenses**. Subject to the entry of the Final Order and subject to paragraph 16 of this Interim Order, each Debtor hereby releases and discharges each of the DIP Secured Parties, in their capacity as such, together with their respective affiliates, agents, attorneys, officers, directors and employees (collectively, the "Released Parties"), from any and all claims and causes of action arising prior to the Petition Date arising out of, based upon or related to, in whole or in part, any of the DIP Loan Documents or any loans under the DIP Facility, any aspect of the relationship between the Debtors, on the one hand, and any or all of the Released Parties, on the other hand, relating to any of DIP Loan Documents or any transaction contemplated thereby or any other acts or omissions by any or all of the Released Parties in connection with the DIP Facility or any of the DIP Loan Documents or their prepetition relationship with such Debtor or any affiliate thereof relating to any of the DIP Loan Documents or any transaction contemplated thereby, including, without limitation, any claims or defenses under chapter 5 of the Bankruptcy Code or any other causes of action; provided that the releases set forth in this paragraph 34 shall not release any claims against a Released Party or liabilities that a court of competent jurisdiction determines results from the bad faith, fraud, gross negligence, or willful misconduct of such Released Party; provided, further, that nothing herein shall relieve the DIP Secured Parties from fulfilling their commitments or obligations under this DIP Facility after the Closing Date.

35. **Protection Under Section 364(e) of the Bankruptcy Code**. If any or all of the provisions of this Interim Order are hereafter reversed, modified, vacated, or stayed, such reversal, modification, vacation or stay shall not affect the validity or enforceability of any DIP Obligation, DIP Lien, Adequate Protection Superpriority Claim (with respect to the Prepetition Secured Parties),

or Adequate Protection Lien (with respect to the Prepetition Secured Parties), or any other claim, lien, security interest or priority authorized or created hereby or pursuant to the DIP Loan Documents or Adequate Protection Obligations owing to the Prepetition Secured Parties incurred prior to the actual receipt by the DIP Agent or the Prepetition Agent, as applicable, of written notice of the effective date of such reversal, modification, vacation or stay. Notwithstanding any such reversal, modification, vacation or stay, any use of Cash Collateral or the incurrence of DIP Obligations, or Adequate Protection Obligations owing to the Prepetition Secured Parties by the Debtors prior to the actual receipt by the DIP Agent or the Prepetition Agent, as applicable, of written notice of the effective date of such reversal, modification, vacation or stay, shall be governed in all respects by the provisions of this Interim Order, and the DIP Secured Parties and the Prepetition Secured Parties shall be entitled to all of the rights, remedies, protections and benefits granted under section 364(e) of the Bankruptcy Code, this Interim Order, and the DIP Loan Documents with respect to all uses of Cash Collateral and the incurrence of DIP Obligations and Adequate Protection Obligations owing to the Prepetition Secured Parties.

36. **Effect of Dismissal of Chapter 11 Cases**. If the Chapter 11 Cases are dismissed, converted or substantively consolidated, such dismissal, conversion or substantive consolidation of these Chapter 11 Cases shall not affect the rights of the DIP Secured Parties and the Prepetition Secured Parties under their respective DIP Loan Documents, Prepetition Loan Documents, or this Interim Order, and all of the respective rights and remedies thereunder of the DIP Secured Parties and the Prepetition Secured Parties shall remain in full force and effect as if the Chapter 11 Cases had not been dismissed, converted, or substantively consolidated. If an order dismissing any of the Chapter 11 Cases is at any time entered, such order shall provide (in accordance with sections 105 and 349 of the Bankruptcy Code) that: (a) the DIP Liens and DIP Superpriority Claims granted to and conferred upon the DIP Agent and the DIP Secured Parties and the protections afforded to the

DIP Agent and the DIP Secured Parties pursuant to this Interim Order and the DIP Loan Documents shall continue in full force and effect and shall maintain their priorities as provided in this Interim Order until all DIP Obligations shall have been paid and satisfied in full (and that such DIP Liens, DIP Superpriority Claims and other protections shall, notwithstanding such dismissal, remain binding on all interested parties); (b) those Prepetition Liens, Adequate Protection Liens, and Adequate Protection Superpriority Claims granted to and conferred upon the Prepetition Secured Parties shall continue in full force and effect and shall maintain their priorities as provided in this Interim Order until all Prepetition Secured Obligations shall have been paid and satisfied in full (and that such Adequate Protection Liens, Adequate Protection Superpriority Claims, and other adequate protection granted to or conferred on the Prepetition Secured Parties shall, notwithstanding such dismissal, remain binding on all interested parties); and (c) to the greatest extent permitted by applicable law, this Court shall retain jurisdiction, notwithstanding such dismissal, for the purpose of enforcing the DIP Liens, the Prepetition Liens, the Adequate Protection Liens, the DIP Superpriority Claims and the Adequate Protection Superpriority Claims referred to herein.

37. **Discharge**. The DIP Obligations and the Prepetition Agent Fees and Expenses provided herein shall not be discharged by the entry of an order confirming any plan of reorganization or liquidation in any of the Chapter 11 Cases, notwithstanding the provisions of section 1141(d) of the Bankruptcy Code, unless such obligations have been indefeasibly paid in full in cash (other than contingent indemnification obligations for which no claim has been asserted or with respect to any letters of credit, cash collateralized) on or before the effective date of such confirmed plan, unless each of the DIP Secured Parties and the Prepetition Secured Parties, as applicable, has agreed in writing (or, with respect to the DIP Obligations, otherwise satisfied in a manner agreed to by the DIP Agent (acting at the direction of the Required DIP Lenders)).

38. **Jurisdiction**. This Court shall have exclusive jurisdiction with respect to any and

all disputes or matters under, or arising out of or in connection with, either the DIP Facility or the DIP Loan Documents.

39. **Authorized Signatories**. The signature of any Authorized Officer (as defined in the Debtor's corporate resolutions filed with the Debtors' voluntary petitions) or Debtors' attorneys, appearing on any one or more of the DIP Loan Documents shall be sufficient to bind the Debtors. No board of directors or managers, as applicable, or other approval shall be necessary.

40. **Headings**. Paragraph headings used herein are for convenience only and are not to affect the construction of, or to be taken into consideration in, interpreting this Interim Order.

41. **Order Effective**. This Interim Order shall be effective as of the date of the signature by the Court.

42. **Controlling Effect of Interim Order**. To the extent any provision of this Interim Order conflicts or is inconsistent with any provision of the Motion, any prepetition agreement or any of the DIP Loan Documents, the provisions of this Interim Order shall control.

43. **Final Hearing**. The Final Hearing on the Motion shall be heard before this Court on August 24, 2026 at 1:00 p.m. (prevailing Central Time). Any objections or responses to entry of the proposed Final Order shall be filed on or before 5:00 p.m. (prevailing Central Time) on August 17, 2026 and served on counsel for the Debtors, the DIP Agent, and the Prepetition Agent. If no objections are timely filed, this Court may enter the Final Order without further notice or a hearing.

Signed: July 28, 2026

Christopher Lopez
United States Bankruptcy Judge

Exhibit 1

Form of DIP Credit Agreement

SENIOR SECURED SUPER-PRIORITY PRIMING DEBTOR-IN-POSSESSION CREDIT AGREEMENT



by and among

WELLS FARGO BANK, NATIONAL ASSOCIATION,
as Agent, Lead Arranger, and sole Book Runner,

THE LENDERS THAT ARE PARTIES HERETO
as the Lenders,

REPUBLIC NATIONAL DISTRIBUTING COMPANY, LLC,
as Parent Borrower, a Borrower, the Company and as a Debtor and Debtor-in-Possession under Chapter 11 of the Bankruptcy Code,

Certain of its Subsidiaries,
as Borrowers and as a Debtor and Debtor-in-Possession under Chapter 11 of the Bankruptcy Code,

Dated as of July [__], 2026

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SENIOR SECURED SUPER-PRIORITY PRIMING DEBTOR-IN-POSSESSION CREDIT AGREEMENT

THIS SENIOR SECURED SUPER-PRIORITY PRIMING DEBTOR-IN-POSSESSION CREDIT AGREEMENT (this "Agreement"), is entered into as of July [____], 2026, by and among:

(a) **REPUBLIC NATIONAL DISTRIBUTING COMPANY, LLC**, a Delaware limited liability company ("RNDC" and "Parent Borrower" and "Company"), as a debtor and debtor-in-possession in the Chapter 11 Cases (as defined below);

(b) the Subsidiaries of RNDC identified on the signature pages hereof as "Borrowers", and those additional entities that hereafter become parties hereto as Borrowers in accordance with the terms hereof by executing the form of Joinder attached hereto as Exhibit J-1 (together with RNDC, each, a "Borrower" and individually and collectively, jointly and severally, the "Borrowers"), each as a debtor and a debtor-in-possession in the Chapter 11 Cases;

(c) the lenders identified on the signature pages hereof (each of such lenders, together with its successors and permitted assigns, is referred to hereinafter as a "Lender", as that term is hereinafter further defined); and

(d) **WELLS FARGO BANK, NATIONAL ASSOCIATION**, a national banking association, as administrative agent for each member of the Lender Group and the Bank Product Providers (in such capacity, together with its successors and assigns in such capacity, "Agent"), as lead arranger (in such capacity, together with its successors and assigns in such capacity, the "Lead Arranger"), and as sole book runner (in such capacity, together with its successors and assigns in such capacity, the "Book Runner").

W I T N E S S E T H:

WHEREAS, on July [__], 2026 (the "Petition Date"), the Borrowers commenced voluntary cases under chapter 11 of the Bankruptcy Code in the Bankruptcy Court, which cases are jointly administered under the caption In re [_], Case No. [_____] (collectively, the "Chapter 11 Cases");

WHEREAS, each Borrower is a debtor and debtor-in-possession in the Chapter 11 Cases (collectively, the "Chapter 11 Debtors"), and the Borrowers continue to operate their businesses and manage their properties as debtors and debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code;

WHEREAS, the Borrowers have requested that the Lenders provide a senior secured superpriority priming debtor-in-possession financing facility consisting of (a) a senior secured superpriority priming revolving credit facility to fund the Chapter 11 Debtors' working capital needs, the administration of the Chapter 11 Cases, the cash collateralization of Existing Letters of Credit to the extent permitted by the Approved Budget and the DIP Orders, and the transactions contemplated by the Approved Budget and the DIP Orders, and (b) a senior secured superpriority priming term loan facility consisting of the roll-up of (x) all of the Prepetition Facility Priority Delayed Draw Term Loans and (y) a portion of the aggregate amount of the Prepetition Facility Revolving Loans on the Closing Date, in each case, subject to the terms and conditions set forth herein and in the DIP Orders;

WHEREAS, the Lenders are willing to provide such facility on the terms and conditions set forth herein and in the DIP Orders;

WHEREAS, the DIP Term Loans shall be deemed made on the Closing Date through the roll-up of the Roll-Up Amount pursuant to the DIP Orders and shall not result in the funding of new cash proceeds to the Borrowers;

WHEREAS, the Chapter 11 Debtors intend to pursue one or more sales, liquidations or other dispositions of their assets in accordance with the milestones, covenants and other terms set forth herein, in the Approved Budget and in the DIP Orders; and

WHEREAS, the obligations of the Loan Parties under the Loan Documents are to be secured by the Collateral and afforded the liens, claims, priorities and protections set forth herein and in the DIP Orders, and all cash received by the Loan Parties during the Chapter 11 Cases, whether from Accounts, sale of Inventory, sale of joint venture interests, sale of other assets, settlements, insurance, condemnation, casualty proceeds or otherwise, shall be applied as set forth herein and in the DIP Orders.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, such parties hereby agree as follows:

1. **DEFINITIONS AND CONSTRUCTION**.

1.1 **Definitions**. As used in this Agreement, the following terms shall have the following definitions:

"Account" means an account (as that term is defined in the Code).

"Accounting Changes" means changes in accounting principles required by the promulgation of any rule, regulation, pronouncement or opinion by the Financial Accounting Standards Board of the American Institute of Certified Public Accountants (or successor thereto or any agency with similar functions).

"Adjusted Daily Simple SOFR" means, for any day (a "Simple SOFR Rate Day"), a rate per annum equal to the greater of (a) the sum of (i) SOFR for the day (such day, a "Simple SOFR Determination Day") that is five (5) U.S. Government Securities Business Days prior to (A) if such Simple SOFR Rate Day is a U.S. Government Securities Business Day, such Simple SOFR Rate Day or (B) if such Simple SOFR Rate Day is not a U.S. Government Securities Business Day, the U.S. Government Securities Business Day immediately preceding such Simple SOFR Rate Day, in each case, as such SOFR is published by the SOFR Administrator on the SOFR Administrator's Website; provided that if by 5:00 p.m. on the second (2nd) U.S. Government Securities Business Day immediately following any Simple SOFR Determination Day, SOFR in respect of such Simple SOFR Determination Day has not been published on the SOFR Administrator's Website and a Benchmark Replacement Date with respect to Adjusted Daily Simple SOFR has not occurred, then SOFR for such Simple SOFR Determination Day will be SOFR as published in respect of the first preceding U.S. Government Securities Business Day for which such SOFR was published on the SOFR Administrator's Website; provided further that SOFR as determined pursuant to this proviso shall be utilized for purposes of calculation of Adjusted Daily Simple SOFR for no more than three (3) consecutive Simple SOFR Rate Days and (ii) the Simple SOFR Adjustment and (b) the Floor. Any change in Adjusted Daily Simple SOFR due to a change in SOFR shall be effective from and including the effective date of such change in SOFR without notice to any Borrower.

"Administrative Questionnaire" has the meaning specified therefor in Section 13.1(a) of this Agreement.

"Affected Financial Institution" means (a) any EEA Financial Institution or (b) any UK Financial Institution.

"Affected Lender" has the meaning specified therefor in Section 2.13(b) of this Agreement.

"Affiliate" means, as to any Person, any entity that directly or indirectly controls, is controlled by, or is under common control with, such Person. For purposes of this definition, "control" means the possession, directly or indirectly, of the power to (a) vote 10% or more of the securities having ordinary voting power for the election of directors of such Person, or (b) direct or cause the direction of management and policies of a business, whether through the ownership of voting securities, by contract or otherwise and either alone or in conjunction with others or any group.

"Agent" has the meaning specified therefor in the preamble to this Agreement.

"Agent-Related Persons" means Agent, together with its Affiliates, officers, directors, employees, attorneys, and agents.

"Agent's Account" means the Deposit Account of Agent identified on Schedule A-1 to this Agreement (or such other Deposit Account of Agent that has been designated as such, in writing, by Agent to Borrowers and the Lenders).

"Agent's Liens" means the Liens granted by each Loan Party or its Subsidiaries to Agent under the Loan Documents and the DIP Orders securing the Obligations.

"Agreement" means this Senior Secured Superpriority Priming Debtor-in-Possession Credit Agreement, as amended, restated, amended and restated, supplemented or otherwise modified from time to time.

"Anti-Corruption Laws" means the FCPA, the U.K. Bribery Act of 2010, as amended, and all other applicable laws and regulations or ordinances concerning or relating to bribery or corruption in any jurisdiction in which any Loan Party or any of its Subsidiaries or Affiliates is located or is doing business.

"Anti-Money Laundering Laws" means the applicable laws or regulations in any jurisdiction in which any Loan Party or any of its Subsidiaries or Affiliates is located or is doing business that relates to money laundering, any predicate crime to money laundering, or any financial record keeping and reporting requirements related thereto.

"Applicable Margin" means as of any date of determination, (a) with respect to Base Rate Loans, 7.50% per annum and (b) with respect to Daily Simple SOFR Loans, 8.50% per annum.

"Approved Budget" means the then most current Budget prepared by the Borrowers and approved by Agent and the Required Lenders in accordance with Section 5.1(n). As of the Closing Date, the Approved Budget is the Initial Budget.

"Asset Disposition" means the disposition of any or all of the assets of any Loan Party or any of their Subsidiaries, whether by sale, lease, transfer or otherwise, in a single transaction, or in a series of related transactions, including any sale, liquidation, going-out-of-business sale, bulk sale, discount sale or other disposition of Inventory or other Collateral outside the ordinary course of business; provided, however, that "Asset Disposition" shall not include a disposition described in clause (a) of Section 6.3.

"Assignee" has the meaning specified therefor in Section 13.1(a) of this Agreement.

"Assignment and Acceptance" means an Assignment and Acceptance Agreement substantially in the form of Exhibit A-1 to this Agreement.

"Authorized Person" means any one of the individuals identified as an officer of a Borrower on Schedule A-2 to this Agreement, or any other individual identified by Parent Borrower as an authorized person and authenticated through Agent's electronic platform or portal in accordance with its procedures for such authentication.

"Avoidance Actions" means any claims, rights or causes of action arising under chapter 5 of the Bankruptcy Code or under any similar state law or other applicable law, including sections 502(d), 544, 545, 547, 548, 549, 550, 551 and 553 of the Bankruptcy Code.

"Avoidance Action Proceeds" means any proceeds, products, property, recoveries, rights to payment or other amounts recovered, received or otherwise realized by any Loan Party or any of its Subsidiaries on account of, or with respect to, any Avoidance Action.

"Bail-In Action" means the exercise of any Write-Down and Conversion Powers by the applicable Resolution Authority in respect of any liability of an Affected Financial Institution.

"Bail-In Legislation" means, (a) with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law, regulation, rule or requirement for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule and (b) with respect to the United Kingdom, Part I of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (other than through liquidation, administration or other insolvency proceedings).

"Bank Product" means any one or more of the following financial products or accommodations extended to any Loan Party by a Bank Product Provider: (a) credit cards (including commercial cards (including so-called "purchase cards", "procurement cards" or "p-cards")), (b) payment card processing services, (c) debit cards, (d) stored value cards, (e) Cash Management Services, or (f) transactions under Hedge Agreements.

"Bank Product Agreements" means those agreements entered into from time to time by any Loan Party with a Bank Product Provider in connection with the obtaining of any of the Bank Products.

"Bank Product Obligations" means (a) all obligations, liabilities, reimbursement obligations, fees, or expenses owing by each Loan Party and its Subsidiaries to any Bank Product Provider pursuant to or evidenced by a Bank Product Agreement and irrespective of whether for the payment of money, whether direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, (b) all Hedge Obligations, and (c) all amounts that Agent or any Lender is obligated to pay to a Bank Product Provider as a result of Agent or such Lender purchasing participations from, or executing guarantees or indemnities or reimbursement obligations to, a Bank Product Provider with respect to the Bank Products provided by such Bank Product Provider to a Loan Party or its Subsidiaries.

"Bank Product Provider" means any Lender or any of its Affiliates, including each of the foregoing in its capacity, if applicable, as a Hedge Provider; provided, that such Person (other than Wells Fargo or its Affiliates) shall have entered into a Bank Product Provider Agreement (as defined in the

Prepetition Facility Credit Agreement) prior to the Petition Date; provided further, that if, at any time, a Lender ceases to be a Lender under this Agreement (prior to the payment in full of the Obligations), then, from and after the date on which it so ceases to be a Lender hereunder, neither it nor any of its Affiliates shall constitute Bank Product Providers and the obligations with respect to Bank Products provided by such former Lender or any of its Affiliates shall no longer constitute Bank Product Obligations.

"Bankruptcy Code" means title 11 of the United States Code, as in effect from time to time.

"Bankruptcy Court" means the United States Bankruptcy Court for the Southern District of Texas having jurisdiction over the Chapter 11 Cases.

"Base Rate" means, for any day, the greatest of (a) the Floor, (b) the Federal Funds Rate in effect on such day plus ½%, (c) SOFR for a one month tenor in effect on such day, plus 1%, provided that this clause (c) shall not be applicable during any period in which SOFR is unavailable or unascertainable, and (d) the rate of interest announced, from time to time, within Wells Fargo at its principal office in San Francisco as its "prime rate" in effect on such day, with the understanding that the "prime rate" is one of Wells Fargo's base rates (not necessarily the lowest of such rates) and serves as the basis upon which effective rates of interest are calculated for those loans making reference thereto and is evidenced by the recording thereof after its announcement in such internal publications as Wells Fargo may designate.

"Base Rate Loan" means each Loan that bears interest at a rate determined by reference to the Base Rate.

"Benchmark" means, initially, Adjusted Daily Simple SOFR; provided that if a Benchmark Transition Event has occurred with respect to Adjusted Daily Simple SOFR or the applicable then-current Benchmark, then "Benchmark" means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to Section 2.12(c)(i).

"Benchmark Replacement" means, with respect to any Benchmark Transition Event for any then-current Benchmark, the sum of: (a) the alternate benchmark rate that has been selected by Agent and Parent Borrower as the replacement for such Benchmark giving due consideration to (i) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement for such then-current Benchmark for Dollar-denominated syndicated credit facilities and (b) the related Benchmark Replacement Adjustment; provided that if such Benchmark Replacement as so determined would be less than the Floor, such Benchmark Replacement shall be deemed to be the Floor for the purposes of this Agreement and the other Loan Documents.

"Benchmark Replacement Adjustment" means, with respect to any replacement of any then-current Benchmark with an Unadjusted Benchmark Replacement, the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by Agent and Parent Borrower giving due consideration to (a) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body or (b) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for Dollar-denominated syndicated credit facilities at such time.

"Benchmark Replacement Date" means the earliest to occur of the following events with respect to any then-current Benchmark:

(a) in the case of clause (a) or (b) of the definition of "Benchmark Transition Event," the later of (i) the date of the public statement or publication of information referenced therein and (ii) the date on which the administrator of such Benchmark, or the published component used in the calculation thereof, permanently or indefinitely ceases to provide such Benchmark or such component thereof; or

(b) in the case of clause (c) of the definition of "Benchmark Transition Event," the first date on which such Benchmark, or the published component used in the calculation thereof, has been determined and announced by the regulatory supervisor for the administrator of such Benchmark or such component thereof to be non-representative.

For the avoidance of doubt, if such Benchmark is a term rate, the "Benchmark Replacement Date" will be deemed to have occurred in the case of clause (a) or (b) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

"Benchmark Transition Event" means the occurrence of one or more of the following events with respect to any then-current Benchmark:

(a) a public statement or publication of information by or on behalf of the administrator of such Benchmark, or the published component used in the calculation thereof, announcing that such administrator has ceased or will cease to provide such Benchmark or such component thereof permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide such Benchmark or such component thereof;

(b) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark, or the published component used in the calculation thereof, the Board of Governors, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such Benchmark or such component, a resolution authority with jurisdiction over the administrator for such Benchmark or such component or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark or such component, which states that the administrator of such Benchmark or such component has ceased or will cease to provide such Benchmark or such component thereof permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide such Benchmark or such component thereof; or

(c) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark, or the published component used in the calculation thereof, announcing that such Benchmark or such component thereof is not, or as of a specified future date will not be, representative.

"Benchmark Transition Start Date" means, in the case of a Benchmark Transition Event, the earlier of (a) the applicable Benchmark Replacement Date and (b) if such Benchmark Transition Event is a public statement or publication of information of a prospective event, the 90th day prior to the expected date of such event as of such public statement or publication of information (or if the expected date of such prospective event is fewer than 90 days after such statement or publication, the date of such statement or publication).

"Benchmark Unavailability Period" means, with respect to any then-current Benchmark, the period, if any, (a) beginning at the time that a Benchmark Replacement Date with respect to such Benchmark has occurred if, at such time, no Benchmark Replacement has replaced such Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.12(c) and (b) ending at the time that a Benchmark Replacement has replaced such Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.12(c).

"Beneficial Ownership Certification" means a certification regarding beneficial ownership as required by the Beneficial Ownership Regulation.

"Beneficial Ownership Regulation" means 31 C.F.R. § 1010.230.

"BHC Act Affiliate" of a Person means an "affiliate" (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such Person.

"Board of Directors" means, as to any Person, the board of directors (or comparable managers) of such Person, or any committee thereof duly authorized to act on behalf of the board of directors (or comparable managers).

"Board of Governors" means the Board of Governors of the Federal Reserve System of the United States (or any successor).

"Borrower" and "Borrowers" have the respective meanings specified therefor in the preamble to this Agreement.

"Borrower Materials" has the meaning specified therefor in Section 17.9(c) of this Agreement.

"Borrowing" means a borrowing consisting of (a) DIP Revolving Loans made on the same day by the DIP Revolving Lenders or (b) DIP Term Loans deemed made on the Closing Date by the DIP Term Loan Lenders pursuant to Section 2.2.

"Budget" means a 13-week budget and cash flow forecast detailing cash receipts, cash disbursements, and inventory levels on a weekly basis for such period, in form and substance reasonably acceptable to the Agent and the Required Lenders.

"Budgeted Two-Week Amount" means, as of any requested Funding Date, the aggregate amount of cash disbursements forecasted in the then-current Approved Budget for the two-week period ending on the last day of the week in which such requested Funding Date occurs.

"Business Day" means any day that is not a Saturday, Sunday or other day on which the Federal Reserve Bank of New York is closed.

"Capital Lease" means a lease that is required to be capitalized for financial reporting purposes in accordance with GAAP.

"Capital Stock" means (a) in the case of a corporation, capital stock, (b) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of capital stock, (c) in the case of a partnership, partnership interests (whether general or limited), (d) in the case of a limited liability company, membership interests and (e) any other equity

interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person.

"Capitalized Lease Obligation" means that portion of the obligations under a Capital Lease that is required to be capitalized in accordance with GAAP.

"Carve-Out" shall have the meaning assigned to such term in the DIP Orders.

"Cash Collateral" shall have the meaning assigned to such term in section 363(a) of the Bankruptcy Code.

"Cash Equivalents" means (a) marketable direct obligations issued by, or unconditionally guaranteed by, the United States or issued by any agency thereof and backed by the full faith and credit of the United States, in each case maturing within one year from the date of acquisition thereof, (b) marketable direct obligations issued or fully guaranteed by any state of the United States or any political subdivision of any such state or any public instrumentality thereof maturing within one year from the date of acquisition thereof and, at the time of acquisition, having one of the two highest ratings obtainable from either Standard & Poor's Rating Group ("S&P") or Moody's Investors Service, Inc. ("Moody's"), (c) commercial paper maturing no more than 270 days from the date of creation thereof and, at the time of acquisition, having a rating of at least A-1 from S&P or at least P-1 from Moody's, (d) certificates of deposit, time deposits, overnight bank deposits or bankers' acceptances maturing within one year from the date of acquisition thereof issued by any bank organized under the laws of the United States or any state thereof or the District of Columbia or any United States branch of a foreign bank having at the date of acquisition thereof combined capital and surplus of not less than $1,000,000,000, (e) Deposit Accounts maintained with (i) any bank that satisfies the criteria described in clause (d) above, or (ii) any other bank organized under the laws of the United States or any state thereof so long as the full amount maintained with any such other bank is insured by the Federal Deposit Insurance Corporation, (f) repurchase obligations of any commercial bank satisfying the requirements of clause (d) of this definition or of any recognized securities dealer having combined capital and surplus of not less than $1,000,000,000, having a term of not more than seven days, with respect to securities satisfying the criteria in clauses (a) or (d) above, (g) debt securities with maturities of six months or less from the date of acquisition backed by standby letters of credit issued by any commercial bank satisfying the criteria described in clause (d) above, and (h) Investments in money market funds substantially all of whose assets are invested in the types of assets described in clauses (a) through (g) above. All such Cash Equivalents must be denominated solely for payment in Dollars.

"Cash Management Services" means any cash management or related services including treasury, depository, return items, overdraft, controlled disbursement, merchant store value cards, e-payables services, electronic funds transfer, interstate depository network, automatic clearing house transfer (including the Automated Clearing House processing of electronic funds transfers through the direct Federal Reserve Fedline system) and other cash management arrangements.

"Casualty Loss" has the meaning given to such term in Section 5.10.

"Change in Law" means the occurrence after the date of this Agreement of: (a) the adoption or effectiveness of any law, rule, regulation, judicial ruling, judgment or treaty, (b) any change in any law, rule, regulation, judicial ruling, judgment or treaty or in the administration, interpretation, implementation or application by any Governmental Authority of any law, rule, regulation, guideline or treaty, (c) any new, or adjustment to, requirements imposed by any domestic or foreign Governmental Authority or resulting from compliance by Agent or any Lender with any request or directive, whether or not having the force of law, from any central bank or other Governmental Authority and related in any manner to Adjusted Daily Simple SOFR, or SOFR, or (d) the making or issuance by any Governmental Authority of any request, rule,

guideline or directive, whether or not having the force of law; provided, that notwithstanding anything in this Agreement to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith, and (ii) all requests, rules, guidelines or directives concerning capital adequacy promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision, or any successor or similar authority, or the United States or foreign regulatory authorities shall, in each case, be deemed to be a "Change in Law," regardless of the date enacted, adopted or issued.

"Change of Control" means that:

(a) Existing Holders fail to own and control, directly or indirectly, 50%, or more, of the Equity Interests of the Company entitled (without regard to the occurrence of any contingency) to vote for the election of members of the Board of Directors of the Company,

(b) any "person" or "group" (within the meaning of Sections 13(d) and 14(d) of the Exchange Act), other than Existing Holders, becomes the beneficial owner (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of 20%, or more, of the Equity Interests of the Company entitled (without regard to the occurrence of any contingency) to vote for the election of members of the Board of Directors of the Company,

(c) a majority of the members of the Board of Directors of the Company do not constitute Continuing Directors, or

(d) the Company fails to own and control, directly or indirectly, 100% of the Equity Interests of each other Subsidiary (or at least 90% of Equity Interests of RNDC Alaska).

"Chapter 11 Cases" shall have the meaning specified in the recitals to this Agreement.

"Chapter 11 Debtors" has the meaning specified in the recitals to this Agreement.

"Closing Date" means the date on which the Interim DIP/Cash Collateral Order has been entered by the Bankruptcy Court and the conditions precedent set forth in Section 3.1 have been satisfied or waived in accordance with this Agreement.

"Code" means the New York Uniform Commercial Code, as in effect from time to time.

"Collateral" means all assets and interests in assets and proceeds thereof now owned or hereafter acquired by any Loan Party or its Subsidiaries in or upon which a Lien is granted by such Person in favor of Agent or the Lenders under any of the Loan Documents or the DIP Orders; provided that Collateral shall not include any Excluded Property.

"Collections" means, all cash, checks, notes, instruments, and other items of payment (including insurance proceeds, cash proceeds of asset sales, rental proceeds and tax refunds).

"Commitment" means, with respect to each DIP Revolving Lender, its DIP Revolving Commitment and, with respect to all DIP Revolving Lenders, the DIP Revolving Commitments.

"Commitment Percentage" means, for any DIP Revolving Lender, such DIP Revolving Lender's DIP Revolving Commitment Percentage.

"Commitment Termination Date" means the earliest to occur of (a) the Maturity Date, (b) the date of termination of the DIP Revolving Commitments during the continuance of an Event of Default (subject to any applicable cure and notice periods as set forth herein), (c) the effective date of the Plan; (d) the date of conversion of the Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code; (e) the date of appointment of any trustee, or an examiner with expanded powers with respect to any Debtor; or (f) the date on which all DIP Revolving Loans and all Obligations related to the DIP Revolving Facility, including all fees, expenses and other amounts owing to Agent, have been paid in full in cash and the DIP Revolving Commitments have terminated.

"Commodity Exchange Act" means the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

"Confidential Information" has the meaning specified therefor in Section 17.9(a) of this Agreement.

"Confirmation Order" means the order of the Bankruptcy Court confirming the Plan under section 1129 of the Bankruptcy Code, which Confirmation Order shall be in form and substance acceptable to the Agent and the Required Lenders, and upon the entry thereof, shall be in full force and effect and shall not be reversed, vacated, stayed, amended, supplemented or otherwise modified, in each case, without the prior written consent of the Agent (acting at the direction of the Requiredf Lenders), which may be provided via email by counsel to the Agent.

"Conforming Changes" means, with respect to either the use or administration of an initial Benchmark or the use, administration, adoption or implementation of any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of "Business Day," the definition of "U.S. Government Securities Business Day," timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment notices, the applicability and length of lookback periods and other technical, administrative or operational matters) that Agent decides may be appropriate to reflect the adoption and implementation of any such rate or to permit the use and administration thereof by Agent in a manner substantially consistent with market practice (or, if Agent decides that adoption of any portion of such market practice is not administratively feasible or if Agent determines that no market practice for the administration of any such rate exists, in such other manner of administration as Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

"Consolidated" or "consolidated" with reference to any term defined herein, means that term as applied to the accounts of the Company and all of its consolidated Subsidiaries, consolidated in accordance with GAAP (but which, by way of clarification, shall not include any Joint Venture which would otherwise be required to be consolidated in accordance with GAAP).

"Continuing Director" means (a) any member of the Board of Directors who was a director (or comparable manager) of Parent Borrower on the Closing Date, and (b) any individual who becomes a member of the Board of Directors after the Petition Date if such individual was approved, appointed or nominated for election to the Board of Directors by either the Existing Holders or a majority of the Continuing Directors.

"Control Agreement" means a control agreement, in form and substance reasonably satisfactory to Agent, executed and delivered by a Loan Party or one of its Subsidiaries, Agent, and the applicable securities intermediary (with respect to a Securities Account) or bank (with respect to a Deposit Account).

"Controlled Substances Act" means the Controlled Substances Act (21 U.S.C. Sections 801 et seq.), as amended from time to time, and any successor statute.

"Copyright Security Agreement" has the meaning specified therefor in the Guaranty and Security Agreement.

"Covered Entity" means any of the following:

(a) a "covered entity" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b);

(b) a "covered bank" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or

(c) a "covered FSI" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

"Covered Party" has the meaning specified therefor in Section 17.15 of this Agreement.

"Credit and Collateral Termination Events" means the occurrence of all of following events: (i) all Obligations have been fully and finally paid and performed (other than inchoate indemnity obligations), (ii) Letter of Credit Collateralization with respect to all Letters of Credit, (iii) all Hedge Agreements have expired, terminated or shall have been cash collateralized in an amount equal to at least 105% of the inchoate obligations thereunder (or other arrangements relating thereto have been made in a writing signed by all Persons party to such Hedge Agreement and the Agent), (iv) all Bank Product Agreements have expired or terminated (or other arrangements relating thereto have been made in a writing signed by all Persons party such agreements and the Agent), and (v) no Person or Governmental Authority shall have any right to request any return or reimbursement of funds from the Agent or the Lenders in connection with any of the foregoing.

"Current Derivative Exposure" means, as of any date of determination, 100% of the aggregate mark-to-market exposure then owing by any Loan Party to any Hedge Provider under Hedge Agreements permitted hereunder, as calculated in reasonable detail by the applicable Bank Product Provider (and provided in writing to Agent) on a monthly basis (or more frequently, in the discretion of the Agent).

"Daily Simple SOFR Loan" means each Loan that bears interest at a rate determined by reference to Adjusted Daily Simple SOFR.

"Debtor Professionals" means, collectively, Kirkland & Ellis LLP and Porter Hedges LLP, as counsel to the Loan Parties, AlixPartners, LLP, as financial advisor to the Loan Parties, and Lazard Frères & Co. LLC, as investment banker to the Loan Parties (and/or such other professionals as are or may be retained by the Loan Parties from time to time).

"Debtors" means the Company, each of its wholly-owned Subsidiaries and RNDC Alaska, each in their capacity as debtors and debtors-in-possession under the Bankruptcy Code.

"Default" means an event, condition, or default that, with the giving of notice, the passage of time, or both, would be an Event of Default.

"Default Right" has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

"Defaulting Lender" means any Lender that (a) has failed to (i) fund all or any portion of its Loans within two Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies Agent and Parent Borrower in writing that such failure is the result of such Lender's determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable Default or Event of Default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to Agent or any other Lender any other amount required to be paid by it hereunder within two Business Days of the date when due, (b) has notified any Borrower or Agent in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender's obligation to fund a Loan hereunder and states that such position is based on such Lender's determination that a condition precedent to funding (which condition precedent, together with any applicable Default or Event of Default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three Business Days after written request by Agent or Parent Borrower, to confirm in writing to Agent and Parent Borrower that it will comply with its prospective funding obligations hereunder (provided, that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by Agent and Parent Borrower), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of any Insolvency Proceeding, (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity, or (iii) become the subject of a Bail-In Action; provided, that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender upon delivery of written notice of such determination to Parent Borrower and each Lender.

"Defaulting Lender Rate" means (a) for the first three days from and after the date the relevant payment is due, Adjusted Daily Simple SOFR, and (b) thereafter, the interest rate then applicable to Daily Simple SOFR Loans.

"Deposit Account" means any deposit account (as that term is defined in the Code).

"Designated Account" means the Deposit Account of Parent Borrower identified on Schedule D-1 to this Agreement (or such other Deposit Account of Parent Borrower located at Designated Account Bank that has been designated as such, in writing, by Borrowers to Agent).

"Designated Account Bank" has the meaning specified therefor in Schedule D-1 to this Agreement (or such other bank that is located within the United States that has been designated as such, in writing, by Borrowers to Agent).

"DIP Collateral" means the Collateral securing the Obligations pursuant to the Loan Documents and the DIP Orders.

"DIP Facility" means, collectively, the DIP Revolving Facility and the DIP Term Loan Facility.

"DIP Orders" means the Interim DIP/Cash Collateral Order and/or the Final DIP/Cash Collateral Order, as applicable and as the context requires.

"DIP Revolving Borrowing" means a Borrowing consisting of DIP Revolving Loans made on the same day by the DIP Revolving Lenders.

"DIP Revolving Commitment" means, with respect to each DIP Revolving Lender, the commitment of such DIP Revolving Lender to make DIP Revolving Loans in an aggregate principal amount not to exceed such DIP Revolving Lender's DIP Revolving Commitment Percentage of the DIP Revolving Committed Amount.

"DIP Revolving Commitment Percentage" means, with respect to any DIP Revolving Lender, the percentage identified as its DIP Revolving Commitment Percentage on Schedule C-1, as such percentage may be modified in connection with any assignment made in accordance with Section 13.1.

"DIP Revolving Committed Amount" means $75,000,000, as such amount may be reduced or terminated in accordance with this Agreement and the DIP Orders.

"DIP Revolving Exposure" means, as of any date of determination, the aggregate outstanding principal amount of all DIP Revolving Loans.

"DIP Revolving Facility" means the senior secured superpriority priming asset-based revolving credit facility established under this Agreement by the DIP Revolving Lenders in favor of the Borrowers.

"DIP Revolving Lender" means each Lender that holds a DIP Revolving Commitment or DIP Revolving Loan.

"DIP Revolving Loan" means a revolving loan or advance made to Borrowers by the DIP Revolving Lenders pursuant to Section 2.1, and includes Base Rate Loans and Daily Simple SOFR Loans.

"DIP Superpriority Claims" shall have the meaning assigned to such term in the DIP Orders.

"DIP Term Loan" means the term loan deemed made to Borrowers on the Closing Date pursuant to Section 2.2 in an aggregate principal amount equal to the Roll-Up Amount.

"DIP Term Loan Borrowing" means the Borrowing of DIP Term Loans deemed made on the Closing Date pursuant to Section 2.2.

"DIP Term Loan Exposure" means, with respect to any DIP Term Loan Lender, as of any date of determination, the outstanding principal amount of DIP Term Loans held by such DIP Term Loan Lender.

"DIP Term Loan Facility" means the term loan facility established under this Agreement through the roll-up of the Prepetition Facility Obligations on the Closing Date.

"DIP Term Loan Lender" means each Lender holding DIP Term Loans.

"Disbursement Variance" means, for any applicable Test Period, the percentage by which actual operating disbursements of the Loan Parties exceed budgeted operating disbursements for such

period, calculated on the basis set forth in the definition of "Permitted Variances" and as reflected in the applicable Variance Report.

"Disqualified Equity Interests" means any Equity Interests that, by their terms (or by the terms of any security or other Equity Interests into which they are convertible or for which they are exchangeable), or upon the happening of any event or condition (a) matures or are mandatorily redeemable (other than solely for Qualified Equity Interests), pursuant to a sinking fund obligation or otherwise (except as a result of a change of control or asset sale so long as any rights of the holders thereof upon the occurrence of a change of control or asset sale event shall be subject to the prior repayment in full of the Loans and all other Obligations that are accrued and payable and the termination of the Commitments), (b) are redeemable at the option of the holder thereof (other than solely for Qualified Equity Interests), in whole or in part, (c) provide for the scheduled payments of dividends in cash, or (d) are or become convertible into or exchangeable for Indebtedness or any other Equity Interests that would constitute Disqualified Equity Interests, in each case, prior to the date that is 180 days after the Maturity Date.

"Distribution Agreements" means, collectively, (i) any material written distribution agreements, contracts of sale, spirits sales agreements, wine sales agreements and related letter agreements, in each case, entered into with or for the benefit of the Loan Parties; provided, that, for purposes of this definition any such agreement or contract shall be deemed material if, at any time of determination, the Loan Parties generated revenue with respect to such agreement or contract in the immediately preceding twelve months (or, if such agreement or contract was acquired or became effective within 12 months from such date, then the actual revenue contributed from such agreement or contract, on an annualized basis) of more than 10% of the Loan Parties' consolidated revenue for the immediately preceding twelve month period and (ii) the agreements and contracts listed on Schedule 1.1E.

"DOL" means the United States Department of Labor.

"Dollars" or "$" means United States dollars.

"Domestic Subsidiary" means any Subsidiary of any Loan Party that is not a Foreign Subsidiary.

"EEA Financial Institution" means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

"EEA Member Country" means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

"EEA Resolution Authority" means any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

"Eligible Transferee" means (a) any Lender (other than a Defaulting Lender), any Affiliate of any Lender and any Related Fund of any Lender; (b) (i) a commercial bank organized under the laws of the United States or any state thereof, and having total assets in excess of $1,000,000,000; (ii) a savings and loan association or savings bank organized under the laws of the United States or any state thereof, and having total assets in excess of $1,000,000,000; (iii) a commercial bank organized under the laws of any

other country or a political subdivision thereof; provided, that (A) (x) such bank is acting through a branch or agency located in the United States, or (y) such bank is organized under the laws of a country that is a member of the Organization for Economic Cooperation and Development or a political subdivision of such country, and (B) such bank has total assets in excess of $1,000,000,000; (c) any other entity (other than a natural person) that is an "accredited investor" (as defined in Regulation D under the Securities Act) that extends credit or buys loans as one of its businesses including insurance companies, investment or mutual funds and lease financing companies, and having total assets in excess of $1,000,000,000; and (d) during the continuation of an Event of Default, any other Person approved by Agent.

"Employee Benefit Plan" means any employee benefit plan within the meaning of Section 3(3) of ERISA, whether or not subject to ERISA, (a) that is or within the preceding six (6) years has been sponsored, maintained or contributed to by any Loan Party or ERISA Affiliate or (b) to which any Loan Party or ERISA Affiliate has, or has had at any time within the preceding six (6) years, any liability, contingent or otherwise.

"Environmental Action" means any written complaint, summons, citation, notice, directive, order, claim, litigation, investigation, judicial or administrative proceeding, judgment, letter, or other written communication from any Governmental Authority, or any third party involving violations of Environmental Laws or releases of Hazardous Materials (a) from any assets, properties, or businesses of any Borrower, any Subsidiary of any Borrower, or any of their predecessors in interest, (b) from adjoining properties or businesses, or (c) from or onto any facilities which received Hazardous Materials generated by any Borrower, any Subsidiary of any Borrower, or any of their predecessors in interest.

"Environmental Law" means any applicable federal, state, provincial, foreign or local statute, law, rule, regulation, ordinance, code, binding and enforceable guideline, binding and enforceable written policy, or rule of common law now or hereafter in effect and in each case as amended, or any judicial or administrative interpretation thereof, including any judicial or administrative order, consent decree or judgment, in each case, to the extent binding on any Loan Party or its Subsidiaries, relating to the environment, the effect of the environment on employee health, or Hazardous Materials, in each case as amended from time to time.

"Environmental Liabilities" means all liabilities, monetary obligations, losses, damages, costs and expenses (including all reasonable fees, disbursements and expenses of counsel, experts, or consultants, and costs of investigation and feasibility studies), fines, penalties, sanctions, and interest incurred as a result of any claim or demand, or Remedial Action required, by any Governmental Authority or any third party, and which relate to any Environmental Action.

"Equipment" means equipment (as that term is defined in the Code).

"Equity Interests" means, with respect to a Person, any Capital Stock of such Person, regardless of class or designation, and all options, warrants, interests, participations, or other equivalents (regardless of how designated) of or in such Person, whether voting or nonvoting, including capital stock (or other ownership or profit interests or units), preferred stock, or any other "equity security" (as such term is defined in Rule 3a11-1 of the General Rules and Regulations promulgated by the SEC under the Exchange Act).

"Equity Issuance" means any issuance or sale by any Loan Party or any of its Subsidiaries of any Equity Interests, or any capital contribution to any Loan Party or any of its Subsidiaries.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended, and any successor statute thereto.

"ERISA Affiliate" means (a) any Person subject to ERISA whose employees are treated as employed by the same employer as the employees of any Loan Party under IRC Section 414(b), (b) any trade or business subject to ERISA whose employees are treated as employed by the same employer as the employees of any Loan Party under IRC Section 414(c), (c) solely for purposes of Section 302 of ERISA and Section 412 of the IRC, any organization subject to ERISA that is a member of an affiliated service group of which any Loan Party is a member under IRC Section 414(m), or (d) solely for purposes of Section 302 of ERISA and Section 412 of the IRC, any Person subject to ERISA that is a party to an arrangement with any Loan Party and whose employees are aggregated with the employees of such Loan Party or its Subsidiaries under IRC Section 414(o).

"ERISA Event" means (a) the occurrence of a Reportable Event for which the 30-day notice requirement has not been waived by applicable regulations issued by the PBGC, (b) the withdrawal of any Loan Party or ERISA Affiliate from a Pension Plan during a plan year in which it was a "substantial employer" as defined in Section 4001(a)(2) of ERISA, (c) the termination of a Pension Plan, the filing of a notice of intent to terminate a Pension Plan or the treatment of a Pension Plan amendment as a termination, under Section 4041 of ERISA, if the plan assets are not sufficient to pay all plan liabilities, (d) the institution of proceedings to terminate, or the appointment of a trustee with respect to, any Pension Plan by the PBGC or any Pension Plan administrator, (e) any other event or condition that would constitute grounds under Section 4042(a) of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan, (f) the imposition of a Lien pursuant to the IRC or ERISA on the property of any Loan Party or ERISA Affiliate in connection with any Employee Benefit Plan or the existence of any facts or circumstances that could reasonably be expected to result in the imposition of a Lien, (g) the partial or complete withdrawal of any Loan Party or ERISA Affiliate from a Multiemployer Plan (other than any withdrawal that would not constitute an Event of Default under Section 8.1), (h) any event or condition that results in the insolvency of a Multiemployer Plan under Section 4245 of ERISA, (i) any event or condition that results in the termination of a Multiemployer Plan under Section 4041A of ERISA or the institution by the PBGC of proceedings to terminate or to appoint a trustee to administer a Multiemployer Plan under ERISA, (j) any Pension Plan being in "at risk status" within the meaning of IRC Section 430(i), (k) any Multiemployer Plan being in "endangered status" or "critical status" within the meaning of IRC Section 432(b), (l) with respect to any Pension Plan, any Loan Party or ERISA Affiliate incurring a substantial cessation of operations within the meaning of ERISA Section 4062(e), (m) an "accumulated funding deficiency" within the meaning of the IRC or ERISA (including Section 412 of the IRC or Section 302 of ERISA) or the failure of any Pension Plan or Multiemployer Plan to meet the minimum funding standards within the meaning of the IRC or ERISA (including Section 412 of the IRC or Section 302 of ERISA), in each case, whether or not waived, (n) the filing of an application for a waiver of the minimum funding standards within the meaning of the IRC or ERISA (including Section 412 of the IRC or Section 302 of ERISA) with respect to any Pension Plan or Multiemployer Plan, (o) the failure to make by its due date a required payment or contribution with respect to any Pension Plan or Multiemployer Plan, or (p) any of the foregoing is reasonably likely to occur in the following 30 days.

"Erroneous Payment" has the meaning specified therefor in Section 17.16 of this Agreement.

"Erroneous Payment Deficiency Assignment" has the meaning specified therefor in Section 17.16 of this Agreement.

"Erroneous Payment Impacted Loans" has the meaning specified therefor in Section 17.16 of this Agreement.

"Erroneous Payment Return Deficiency" has the meaning specified therefor in Section 17.16 of this Agreement.

"EU Bail-In Legislation Schedule" means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

"Event of Default" has the meaning specified therefor in Section 8.1 of this Agreement.

"Exchange Act" means the Securities Exchange Act of 1934, as in effect from time to time.

"Excluded Assets" means all of each Loan Party's right, title and interest in and to any assets that are expressly excluded from Collateral pursuant to the DIP Orders or the Guaranty and Security Agreement; provided, that Excluded Assets shall not include any proceeds of any Asset Disposition, Casualty Loss or other disposition of Collateral to the extent such proceeds are required to be applied to the Obligations pursuant to Section 2.4 or the DIP Orders.

"Excluded JV Equity Interests" means Equity Interests (or individual rights (i.e., economic rights, management rights, etc.) in respect thereof, as applicable) now or hereafter issued by any Joint Venture if under the terms of bylaws, operating agreement, or partnership agreement of such Joint Venture or under applicable law, or applicable law with respect to such Equity Interests, the grant of a security interest or lien therein is prohibited as a matter of law or under the terms of such bylaws, operating agreement, or partnership agreement and such prohibition or restriction has not been waived or the consent of the other parties to such bylaws, operating agreement, or partnership agreement has not been obtained (provided, that (a) the foregoing exclusions shall in no way be construed (i) to apply to the extent that any described prohibition or restriction is ineffective under Section 9-406, 9-407, 9-408, or 9-409 of the Code or other applicable law, or (ii) to apply to the extent that any consent or waiver has been obtained that would permit Agent's security interest or lien to attach notwithstanding the prohibition or restriction on the pledge of such Equity Interests and (b) the foregoing exclusions shall in no way be construed to limit, impair, or otherwise affect any of Agent's, any other member of the Lender Group's or any Bank Product Provider's continuing security interests in and liens upon any rights or interests of any Loan Party in or to (A) monies due or to become due under or in connection with such Equity Interests or the bylaws, operating agreement, or partnership agreement of such Joint Venture or (B) any proceeds from the sale, license, lease, or other dispositions of such Equity Interests or any rights under such bylaws, operating agreement, or partnership agreement); provided, that, for the avoidance of doubt and notwithstanding the foregoing or anything herein to the contrary, to the extent that any individual rights in respect of any such Equity Interests is not prohibited as a matter of law or under the terms of such bylaws, operating agreement, or partnership agreement, then such individual rights shall not constitute "Excluded JV Equity Interests" notwithstanding that other rights in respect of such Equity Interests may constitute "Excluded JV Equity Interests".

"Excluded Property" means (i) Excluded Assets of each Loan Party, (ii) Excluded JV Equity Interests, and (iii) any United States intent-to-use trademark applications to the extent that, and solely during the period in which, the grant of a security interest therein would impair the validity or enforceability of such intent-to-use trademark applications under applicable federal law; provided, that upon submission and acceptance by the PTO of an amendment to allege use pursuant to 15 U.S.C. Section 1060(a) (or any successor provision), such intent-to-use trademark application shall be considered Collateral. Notwithstanding the foregoing, upon entry of the Final DIP/Cash Collateral Order, the Collateral shall include all Avoidance Action Proceeds, but, for the avoidance of doubt, shall not include the Avoidance Actions themselves.

"Excluded Swap Obligation" means, with respect to any Loan Party, any Swap Obligation if, and to the extent that, all or a portion of the guaranty of such Loan Party of (including by virtue of the joint and several liability provisions of Section 2.15), or the grant by such Loan Party of a security interest to secure, such Swap Obligation (or any guaranty thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the

application or official interpretation of any thereof) by virtue of such Loan Party's failure for any reason to constitute an "eligible contract participant" as defined in the Commodity Exchange Act and the regulations thereunder at the time the guaranty of such Loan Party or the grant of such security interest becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such guaranty or security interest is or becomes illegal.

"Excluded Taxes" means (i) any tax imposed on the net income or net profits of any Lender or any Participant (including any branch profits taxes), in each case imposed by the jurisdiction (or by any political subdivision or taxing authority thereof) in which such Lender or such Participant is organized or the jurisdiction (or by any political subdivision or taxing authority thereof) in which such Lender's or such Participant's principal office is located in or as a result of a present or former connection between such Lender or such Participant and the jurisdiction or taxing authority imposing the tax (other than any such connection arising solely from such Lender or such Participant having executed, delivered or performed its obligations or received payment under, or enforced its rights or remedies under this Agreement or any other Loan Document), (ii) United States federal withholding taxes that would not have been imposed but for a Lender's or a Participant's failure to comply with the requirements of Section 16.2 of this Agreement, (iii) any United States federal withholding taxes that would be imposed on amounts payable to a Foreign Lender based upon the applicable withholding rate in effect at the time such Foreign Lender becomes a party to this Agreement (or designates a new lending office, other than a designation made at the request of a Loan Party), except that Excluded Taxes shall not include (A) any amount that such Foreign Lender (or its assignor, if any) was previously entitled to receive pursuant to Section 16.1 of this Agreement, if any, with respect to such withholding tax at the time such Foreign Lender becomes a party to this Agreement (or designates a new lending office), and (B) additional United States federal withholding taxes that may be imposed after the time such Foreign Lender becomes a party to this Agreement (or designates a new lending office), as a result of a change in law, rule, regulation, treaty, order or other decision or other Change in Law with respect to any of the foregoing by any Governmental Authority, and (iv) any United States federal withholding taxes imposed under FATCA.

"Existing Holders" means those Persons listed on Schedule 1.1F.

"Existing LC Cash Collateral Account" means a Deposit Account designated by, or acceptable to, the Agent, into which cash collateral for Existing Letters of Credit shall be deposited.

"Existing Letters of Credit" means the letters of credit issued and outstanding under the Prepetition Facility Credit Agreement as of the Petition Date or Closing Date, as applicable, and identified on Schedule E-1.

"Facility" means each of the DIP Revolving Facility and the DIP Term Loan Facility, as applicable.

"FATCA" means Sections 1471 through 1474 of the IRC, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), and (a) any current or future regulations or official interpretations thereof, (b) any agreements entered into pursuant to Section 1471(b)(1) of the IRC, and (c) any intergovernmental agreement entered into by the United States (or any fiscal or regulatory legislation, rules, or practices adopted pursuant to any such intergovernmental agreement entered into in connection therewith).

"FCPA" means the Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder.

"Federal Funds Rate" means, for any period, a fluctuating interest rate per annum equal to, for each day during such period, the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day which is a Business Day, the average of the quotations for such day on such transactions received by Agent from three Federal funds brokers of recognized standing selected by it (and, if any such rate is below zero, then the rate determined pursuant to this definition shall be deemed to be zero).

"Fee Letter" means that certain fee letter, dated as of the Closing Date, among Parent Borrower and Agent, as the same may be amended, restated, supplemented, or otherwise modified from time to time.

"FIFO" means the first in, first out method of accounting for Inventory.

"Final DIP/Cash Collateral Order" means the order entered by the Bankruptcy Court in the Chapter 11 Cases approving the DIP Facility and the Chapter 11 Debtors' use of Cash Collateral, in each case, on a final basis, in form and substance acceptable to the Agent and the Required Lenders, which, upon entry thereof, shall be in full force and effect and shall not be reversed, vacated, stayed, amended, supplemented or otherwise modified, in each case, without the prior written consent of the Agent (acting at the direction of the Required Lenders).

"Financials" means, as to any Person and with respect to any fiscal period, the consolidated balance sheet of such Person and its Subsidiaries and consolidated statements of income, retained earnings, and changes in financial position for such period.

"First Day Orders" means all material orders entered by the Bankruptcy Court pursuant to motions filed on or about the Petition Date by the Chapter 11 Debtors for which approval is sought at the "first day" hearing, each of which shall be reasonably acceptable to the Agent.

"Fiscal Year" means a year ending December 31.

"Flood Laws" means the National Flood Insurance Act of 1968, Flood Disaster Protection Act of 1973, and related laws, rules and regulations, including any amendments or successor provisions.

"Floor" means a rate of interest equal to (i) with respect to Daily Simple SOFR Loans, 1.00% per annum and (ii) with respect to Base Rate Loans, 2.00% per annum.

"Foreign Lender" means any Lender or Participant that is not a United States person within the meaning of IRC section 7701(a)(30).

"Foreign Subsidiary" means any direct or indirect subsidiary of any Loan Party that is organized under the laws of any jurisdiction other than the United States, any state thereof or the District of Columbia.

"Funded Indebtedness" means, with respect to any Person, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds (other than surety or similar bonds), debentures, notes or similar instruments, or upon which interest payments are customarily made, (c) all obligations of such Person under conditional sale or other title retention agreements relating to property purchased by such Person (other than customary reservations or retentions of title under agreements with suppliers entered into in the ordinary course of business), (d) all obligations of such Person issued or assumed as the deferred purchase price of property or services

purchased by such Person (other than trade debt incurred in the ordinary course of business and due within 12 months of the incurrence thereof) that would appear as liabilities on a balance sheet of such Person, including, without limitation, earnouts in connection with any Acquisition or Investment, (e) the principal portion of all obligations of such Person under Capital Leases, (f) the maximum amount of all letters of credit issued or bankers' acceptances facilities created for the account of such Person and, without duplication, all drafts drawn thereunder (to the extent unreimbursed), (g) all preferred Capital Stock issued by such Person and required by the terms thereof to be redeemed, or for which mandatory sinking fund payments are due, by a fixed date prior to 180 days following the Maturity Date, (h) the principal component of payments due under any synthetic lease, tax retention operating lease, off-balance sheet loan or similar off-balance sheet financing product, other than operating leases that do not constitute any of the foregoing, during the applicable period ending on such date, determined on a consolidated basis in accordance with GAAP, (i) all Indebtedness of another Person of the type referred to in clauses (a) through (h) above secured by (or for which the holder of such Funded Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on, or payable out of the proceeds of production from property owned or acquired by such Person, whether or not the obligations secured thereby have been assumed, (j) all guaranties of such Person with respect to Indebtedness of the type referred to in clauses (a) through (h) above of another Person and (k) Indebtedness of the type referred to in clauses (a) through (j) above of any partnership or unincorporated joint venture in which such Person is legally obligated or has a reasonable expectation of being liable with respect thereto.

"Funding Date" means the date on which a Borrowing occurs.

"GAAP" means generally accepted accounting principles as in effect from time to time in the United States, consistently applied.

"Governing Documents" means, with respect to any Person, the certificate or articles of incorporation, by-laws, or other organizational documents of such Person.

"Governmental Authority" means the government of any nation or any political subdivision thereof, whether at the national, state, territorial, provincial, county, municipal or any other level, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of, or pertaining to, government (including any supra-national bodies such as the European Union or the European Central Bank).

"Guarantor" means (a) each Person that guaranties all or a portion of the Obligations, including any Person that is a "Guarantor" under the Guaranty and Security Agreement, and (b) each other Person that becomes a guarantor after the Closing Date pursuant to Section 5.16 of this Agreement.

"Guaranty and Security Agreement" means a guaranty and security agreement, dated as of even date with this Agreement, in form and substance reasonably satisfactory to Agent, executed and delivered by each of the Loan Parties to Agent.

"Hazardous Materials" means (a) substances that are defined or listed in, or otherwise classified pursuant to, any applicable laws or regulations as "hazardous substances," "hazardous materials," "hazardous wastes," "toxic substances," or any other formulation intended to define, list, or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, reproductive toxicity, or "EP toxicity", (b) oil, petroleum, or petroleum derived substances, natural gas, natural gas liquids, synthetic gas, drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas, or geothermal resources, (c) any flammable substances or explosives or any radioactive materials, and (d) asbestos in any form or electrical

equipment that contains any oil or dielectric fluid containing levels of polychlorinated biphenyls in excess of 50 parts per million.

"Hedge Agreement" means a "swap agreement" as that term is defined in Section 101(53B)(A) of the Bankruptcy Code.

"Hedge Obligations" means any and all obligations or liabilities, whether absolute or contingent, due or to become due, now existing or hereafter arising, of each Loan Party and its Subsidiaries arising under, owing pursuant to, or existing in respect of Hedge Agreements entered into with one or more of the Hedge Providers.

"Hedge Provider" means any Bank Product Provider that is a party to a Hedge Agreement with a Loan Party or its Subsidiaries or otherwise provides Bank Products under clause (f) of the definition thereof; provided, that if, at any time, a Lender ceases to be a Lender under this Agreement (prior to the payment in full of the Obligations), then, from and after the date on which it ceases to be a Lender hereunder, neither it nor any of its Affiliates shall constitute Hedge Providers with respect to Hedge Agreements entered into after such date and the obligations with respect to Hedge Agreements entered into after such date with such former Lender or any of its Affiliates shall no longer constitute Hedge Obligations.

"Heritage Joint Venture" means Heritage Wine Cellars, LLC, an Illinois limited liability company.

"HWC" means Heritage Wine Cellars, LLC, an Illinois limited liability company.

"Idaho Joint Venture" means Young's Market Company of Idaho, LLC, an Idaho limited liability company.

"Imported Inventory Agreement" means an agreement, in form and substance acceptable to the Agent, duly executed by the Agent, a Borrower and a customs broker or freight forwarder by which such customs broker or freight forwarder agrees to act as the Agent's bailee for the purpose of perfecting by possession the Agent's security interest in original documents that are from time to time in such customs broker's or freight forwarder's possession, and to carry out the Agent's instructions with respect to such original documents and the Inventory of such Borrower evidenced thereby.

"In-Transit Inventory" means Inventory that is in transit from a location outside the United States to a location in the United States.

"Indebtedness" means, with respect to any Person, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, or upon which interest payments are customarily made, (c) all obligations of such Person under conditional sale or other title retention agreements relating to property purchased by such Person (other than customary reservations or retentions of title under agreements with vendors and suppliers entered into in the ordinary course of business), (d) all obligations of such Person issued or assumed as the deferred purchase price of property or services purchased by such Person (other than trade debt incurred in the ordinary course of business and due within six months of the incurrence thereof) which would appear as liabilities on a balance sheet of such Person, (e) all obligations of such Person under take-or-pay or similar arrangements or under commodities agreements, (f) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on, or payable out of the proceeds of production from, property owned or acquired by such Person, whether or not the obligations secured thereby have been assumed, (g) all guaranties of such Person with respect to Indebtedness of others of the type referred in this definition of another Person, (h) all

obligations of such Person under Hedge Agreements, (i) the maximum amount of all letters of credit issued or bankers' acceptances facilities created for the account of such Person and, without duplication, all drafts drawn thereunder (to the extent unreimbursed), (j) all preferred Capital Stock issued by such Person and required by the terms thereof to be redeemed, or for which mandatory sinking fund payments are due, by a fixed date prior to 180 days following the Maturity Date, (k) the principal component of payments due on Capital Leases or under any synthetic lease, tax retention operating lease, off-balance sheet loan or similar off-balance sheet financing product, other than operating leases that do not constitute any of the foregoing, during the applicable period ending on such date, determined on a consolidated basis in accordance with GAAP, and (l) the Indebtedness of any partnership or unincorporated joint venture in which such Person is a general partner or a joint venturer in which such Person is legally obligated or has a reasonable expectation of being liable with respect thereto.

"Indemnified Liabilities" has the meaning specified therefor in Section 10.3 of this Agreement.

"Indemnified Person" has the meaning specified therefor in Section 10.3 of this Agreement.

"Indemnified Taxes" means, (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by, or on account of any obligation of, any Loan Party under any Loan Document, and (b) to the extent not otherwise described in the foregoing clause (a), Other Taxes.

"Independent Accountant" means a firm of independent public accountants of nationally recognized standing selected by the Board of Directors of the Parent Borrower, which is "independent" as such term is defined in Rule 2-01 of Regulation S-X promulgated by the Securities and Exchange Commission.

"Initial Budget" means a 13-week cash flow projection as attached to Annex III.

"Insolvency Proceeding" means any proceeding commenced by or against any Person under any provision of the Bankruptcy Code or under any other state or federal bankruptcy or insolvency law, assignments for the benefit of creditors, formal or informal moratoria, compositions, extensions generally with creditors, or proceedings seeking reorganization, arrangement, or other similar relief.

"Installment" means, with respect to any obligation, each installment of rent under, or payment of (or in the nature of) principal of, such obligation that is stated or scheduled (in accordance with the terms of such obligation) to be due and payable.

"Intercompany Subordination Agreement" means an intercompany subordination agreement, dated as of even date with this Agreement, executed and delivered by each Loan Party and Agent, the form and substance of which is reasonably satisfactory to Agent.

"Interest Payment Date" means, as to any Base Rate Loan or Daily Simple SOFR Loan, the first day of each month and the Maturity Date.

"Interim DIP/Cash Collateral Order" means an order entered by the Bankruptcy Court in the Chapter 11 Cases approving the DIP Facility and the Chapter 11 Debtors' use of Cash Collateral, in each case, on an interim basis, which order shall be in form and substance acceptable to the Agent and the Required Lenders, and shall be in full force and effect, and shall not, subject to entry of the Final DIP/Cash Collateral Order, be reversed, vacated, stayed, amended, supplemented or otherwise modified without the prior written consent of the Agent (acting at the direction of the Required Lenders).

"Inventory" means inventory (as that term is defined in the Code).

"Investment" means, with respect to any Person, any investment by such Person in any other Person (including Affiliates) in the form of loans, guarantees, advances, capital contributions (excluding (a) commission, travel, and similar advances to officers and employees of such Person made in the ordinary course of business, and (b) *bona fide* accounts receivable arising in the ordinary course of business), or acquisitions of Indebtedness, Equity Interests, or all or substantially all of the assets of such other Person (or of any division or business line of such other Person), and any other items that are or would be classified as investments on a balance sheet prepared in accordance with GAAP. The amount of any Investment shall be the original cost of such Investment ***plus*** the cost of all additions thereto, without any adjustment for increases or decreases in value, or write-ups, write-downs, or write-offs with respect to such Investment.

"IRC" means the Internal Revenue Code of 1986, as in effect from time to time.

"IRS" means the United States Internal Revenue Service.

"Joinder" means a joinder agreement substantially in the form of Exhibit J-1 to this Agreement.

"Joint Venture" means (i) RNDC General, LLC (f/k/a NDC General, LLC), an Ohio limited liability company; (ii) Republic National Distributing Company, LLC (f/k/a Republic National Distributing Company of Kentucky, LLC), a Kentucky limited liability company; (iii) [reserved]; (iv) RNDC South Carolina, LLC, a Delaware limited liability company; (v) Republic National Distributing Company of Indiana, LLC, an Indiana limited liability company; (vi) RNDC-NWS, LLC, a Michigan limited liability company; (vii) the Oklahoma Joint Venture; (viii) RNDC NY; (ix) the Liberation Joint Venture; (x) the Heritage Joint Venture; (xi) the Idaho Joint Venture; and (xii) any other Person in which any Loan Party holds an equity interest of not greater than 50% of the Voting Stock thereof.

"Lender" has the meaning set forth in the preamble to this Agreement, and shall include any other Person made a party to this Agreement pursuant to the provisions of Section 13.1 of this Agreement and "Lenders" means each of the Lenders or any one or more of them.

"Lender Group" means each of the Lenders and Agent, or any one or more of them.

"Lender Group Expenses" means all (a) costs or expenses (including taxes and insurance premiums) required to be paid by any Loan Party or its Subsidiaries under any of the Loan Documents or DIP Orders that are paid, advanced, or incurred by the Lender Group, (b) documented out-of-pocket fees or charges paid or incurred by Agent in connection with the Lender Group's transactions with each Loan Party and its Subsidiaries under any of the Loan Documents or DIP Orders, including, photocopying, notarization, couriers and messengers, telecommunication, public record searches, filing fees, recording fees, publication, real estate surveys, real estate title policies and endorsements, and environmental audits, (c) Agent's customary fees and charges imposed or incurred in connection with any background checks or OFAC/PEP searches related to any Loan Party or its Subsidiaries, (d) Agent's customary fees and charges (as adjusted from time to time) with respect to the disbursement of funds (or the receipt of funds) to or for the account of any Borrower (whether by wire transfer or otherwise), together with any out-of-pocket costs and expenses incurred in connection therewith, (e) customary charges imposed or incurred by Agent resulting from the dishonor of checks payable by or to any Loan Party, (f) reasonable, documented out-of-pocket costs and expenses paid or incurred by the Lender Group to correct any default or enforce any provision of the Loan Documents or DIP Orders, or during the continuance of an Event of Default, in gaining possession of, maintaining, handling, preserving, storing, shipping, selling, preparing for sale, or

advertising to sell the Collateral, or any portion thereof, irrespective of whether a sale is consummated, (g) field examination, appraisal, and valuation fees and expenses of Agent related to any field examinations, appraisals, or valuations to the extent of the fees and charges, and subject to the limitations, provided in Section 5.7 of this Agreement, (h) Agent's and Lenders' reasonable, documented costs and expenses (including reasonable and documented attorneys' fees and expenses) relative to third party claims or any other lawsuit, contested matter, adversary proceeding or adverse proceeding paid or incurred, whether in enforcing or defending the Loan Documents or DIP Orders or otherwise in connection with the transactions contemplated by the Loan Documents or DIP Orders, Agent's Liens in and to the Collateral, the Chapter 11 Cases or the Lender Group's relationship with any Loan Party or any of its Subsidiaries, (i) Agent's reasonable and documented costs and expenses (including reasonable and documented attorneys' fees and due diligence expenses) incurred in advising, structuring, drafting, reviewing, administering (including travel, meals, and lodging), or amending, waiving, or modifying the Loan Documents or DIP Orders, and (j) Agent's and each Lender's reasonable and documented costs and expenses (including reasonable and documented attorneys, accountants, consultants, and other advisors fees and expenses) incurred in terminating, enforcing (including attorneys, accountants, consultants, and other advisors fees and expenses incurred in connection with a "workout," a "restructuring," or an Insolvency Proceeding concerning any Loan Party or any of its Subsidiaries or in exercising rights or remedies under the Loan Documents or DIP Orders), or defending the Loan Documents or DIP Orders, irrespective of whether a lawsuit or other adverse proceeding is brought, or in taking any enforcement action or any Remedial Action with respect to the Collateral.

"Lender Group Representatives" has the meaning specified therefor in Section 17.9 of this Agreement.

"Lender Professionals" means, collectively, Paul Hastings LLP, as counsel to the Agent, Carl Marks Advisors, as financial advisor to the Agent, and/or such other professionals as are or may be retained by the Agent from time to time.

"Lender-Related Person" means, with respect to any Lender, such Lender, together with such Lender's Affiliates, officers, directors, employees, attorneys, and agents.

"Liberation Joint Venture" means Liberation Distribution, LLC, a Delaware limited liability company.

"Lien" means any mortgage, deed of trust, pledge, hypothecation, assignment, charge, deposit arrangement, encumbrance, easement, lien (statutory or other), security interest, or other security arrangement and any other preference, priority, or preferential arrangement of any kind or nature whatsoever, including any conditional sale contract or other title retention agreement, the interest of a lessor under a Capital Lease and any synthetic or other financing lease having substantially the same economic effect as any of the foregoing.

"Liquidation Process" means the sale, liquidation, wind-down or other disposition process pursued by the Chapter 11 Debtors in the Chapter 11 Cases in accordance with the Approved Budget, the DIP Orders, the Milestones, this Agreement.

"Liquidity" means, as of any date of determination, the aggregate amount of unrestricted (other than any Liens in favor of the Prepetition Facility Secured Parties) cash and Cash Equivalents of the Loan Parties as of such date.

"Loan" or "Loans" means, individually or collectively, as the context may require, any DIP Revolving Loan or DIP Term Loan made or deemed made hereunder.

"Loan Account" has the meaning specified therefor in Section 2.9 of this Agreement.

"Loan Documents" means this Agreement, the DIP Orders, the Control Agreements, the Copyright Security Agreement, the Fee Letter, the Guaranty and Security Agreement, the Intercompany Subordination Agreement, the Mortgages, the Patent Security Agreement, the Trademark Security Agreement, any note or notes executed by Borrowers in connection with this Agreement and payable to any member of the Lender Group, and any other instrument or agreement entered into, now or in the future, by any Loan Party or any of its Subsidiaries and any member of the Lender Group in connection with this Agreement (but specifically excluding Bank Product Agreements).

"Loan Party" means any Borrower or any Guarantor.

"Major Supplier" has the meaning given to such term in Section 4.31.

"Margin Stock" as defined in Regulation U of the Board of Governors as in effect from time to time.

"Material Adverse Effect" means any event, facts, or circumstances, which, after the Closing Date, has a material adverse effect on (a) the business, assets, operations, financial condition, or income of the Loan Parties taken as a whole, or (b) the validity or enforceability of the Loan Documents or any of the rights or remedies of the Agent or the Lenders thereunder (it being understood that Material Adverse Effect shall exclude (i) any matters publicly disclosed prior to the Petition Date, (ii) matters resulting from the Chapter 11 Cases and the events and conditions related and/or leading up to the Chapter 11 Cases and the effects thereof and (iii) any action required to be taken under the DIP Orders).

"Material Contract" means (a) the Distribution Agreements, (b) any contract or other arrangement (other than any of the Leases or the Loan Documents), whether written or oral, to which any Loan Party or any of its Subsidiaries is a party as to which the breach or non-performance (in each case after giving effect to any cure or grace period), cancellation or failure to renew by any party thereto could reasonably be expected to have a Material Adverse Effect, and (c) any documents evidencing third party Indebtedness in excess of $2,500,000.

"Maturity Date" means [_____], 2026[1]; provided, that, such date may be extended with the written consent of the Required Lenders, but not past [_____], 2027[2].

"Milestones" means the milestones set forth in Section 6.21.

"Michigan Joint Venture" means RNDC-NWS, LLC, a Michigan limited liability company.

"Moody's" has the meaning specified therefor in the definition of Cash Equivalents.

"Mortgages" means, individually and collectively, one or more mortgages, deeds of trust, or deeds to secure debt, executed and delivered by a Loan Party or one of its Subsidiaries in favor of Agent, in form and substance reasonably satisfactory to Agent, that encumber the Real Property Collateral.

"Multiemployer Plan" means any multiemployer plan within the meaning of Section 3(37) or 4001(a)(3) of ERISA that is subject to Title IV of ERISA with respect to which any Loan Party or ERISA

[1] 90 days after the Closing Date.
[2] 150 days after the Closing Date.

Affiliate has an obligation to contribute or has any liability, contingent or otherwise or could be assessed Withdrawal Liability.

"Net Cash Proceeds" means the aggregate cash proceeds received by the Loan Parties or any of their Subsidiaries in respect of any Asset Disposition, Casualty Loss, Funded Indebtedness other than Permitted Indebtedness or Equity Issuance, including proceeds of any sale, liquidation, going-out-of-business sale, bulk sale, discount sale or other disposition of Inventory or other Collateral outside the ordinary course of business, net only of (a) direct costs (including legal, accounting and investment banking fees, and sales commissions, if any), (b) taxes paid or payable as a result thereof, (c) amounts required to be applied to Indebtedness permitted hereunder secured by a Permitted Lien on the assets sold or otherwise disposed of to the extent such Permitted Lien is senior to the Lien of the Agent, and (d) any amounts required to be applied or paid pursuant to the DIP Orders in connection with such Asset Disposition, Casualty Loss, Funded Indebtedness or Equity Issuance; it being understood that "Net Cash Proceeds" shall include any cash received upon the sale or other disposition of any non-cash consideration received by the Borrowers or any of their Subsidiaries in any Asset Disposition.

"Non-Consenting Lender" has the meaning specified therefor in Section 14.2(a) of this Agreement.

"Non-Defaulting Lender" means each Lender other than a Defaulting Lender.

"Obligations" means (a) all loans (including the DIP Term Loans and the DIP Revolving Loans), debts, principal, interest, including any interest that accrues after the commencement of the Chapter 11 Cases, regardless of whether allowed or allowable in whole or in part as a claim in the Chapter 11 Cases, premiums, liabilities, including all amounts charged to the Loan Account pursuant to this Agreement, obligations, including indemnification obligations, fees, including the fees provided for in the Fee Letter, Lender Group Expenses, Lender Professional fees and expenses, guaranties, and all covenants and duties of any other kind and description owing by any Loan Party arising out of, under, pursuant to, in connection with, or evidenced by this Agreement, the DIP Orders or any of the other Loan Documents and irrespective of whether for the payment of money, whether direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, including all interest not paid when due and all other expenses or other amounts that any Loan Party is required to pay or reimburse by the Loan Documents, the DIP Orders, law or otherwise in connection with the Loan Documents, and (b) all Bank Product Obligations. Without limiting the generality of the foregoing, the Obligations of Borrowers under the Loan Documents include the obligation to pay (i) the principal of the DIP Revolving Loans and the DIP Term Loans, (ii) interest accrued on the DIP Revolving Loans and the DIP Term Loans, (iii) Lender Group Expenses, including Lender Professional fees and expenses, (iv) fees payable under this Agreement or any of the other Loan Documents, and (v) indemnities and other amounts payable by any Loan Party under any Loan Document or the DIP Orders. Any reference in this Agreement or in the Loan Documents to the Obligations shall include all or any portion thereof and any extensions, modifications, renewals, or alterations thereof, both prior and subsequent to the Chapter 11 Cases. Notwithstanding anything to the contrary contained in the foregoing, the Obligations shall exclude any Excluded Swap Obligation.

"Official Committee" means any official committee of unsecured creditors appointed in any of the Chapter 11 Cases.

"OFAC" means The Office of Foreign Assets Control of the U.S. Department of the Treasury.

"Oklahoma Joint Venture" means Central Liquor Company, L.P., an Oklahoma limited partnership.

"OLV" means, as to any particular asset, the value, net of liquidation expenses of selling such asset, that is estimated to be recoverable in an orderly liquidation thereof, as determined from time to time by an appraiser with recognized experience in the Parent Borrower's industry selected or approved by Agent in its Permitted Discretion.

"Originating Lender" has the meaning specified therefor in Section 13.1(e) of this Agreement.

"Other Taxes" means all present or future stamp, court, excise, value added, or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document.

"Parent Borrower" has the meaning specified therefor in the Preamble of this Agreement.

"Participant" has the meaning specified therefor in Section 13.1(e) of this Agreement.

"Participant Register" has the meaning set forth in Section 13.1(i) of this Agreement.

"Patent Security Agreement" has the meaning specified therefor in the Guaranty and Security Agreement.

"Patriot Act" has the meaning specified therefor in Section 4.13 of this Agreement.

"Payment Recipient" has the meaning specified therefor in Section 17.16 of this Agreement.

"PBGC" means the Pension Benefit Guaranty Corporation or any successor agency.

"Pension Plan" means any Employee Benefit Plan, other than a Multiemployer Plan, which is subject to the provisions of Title IV or Section 302 of ERISA or Sections 412 or 430 of the Code sponsored, maintained, or contributed to by any Loan Party or ERISA Affiliate or to which any Loan Party or ERISA Affiliate has any liability, contingent or otherwise.

"Permitted Discretion" means a determination made in good faith and in the exercise of reasonable business judgment from the perspective of a secured debtor-in-possession lender.

"Permitted Indebtedness" means:

(a) Indebtedness to the Lenders with respect to the Loans or otherwise, pursuant to the Loan Documents and the DIP Orders;

(b) trade payables and other ordinary course operating liabilities incurred by the Loan Parties after the Petition Date in the ordinary course of business, solely to the extent consistent with the Approved Budget and permitted by the DIP Orders;

(c) Indebtedness existing on the Petition Date and described on Schedule 1.1C, solely to the extent subject to the terms of the DIP Orders; provided that no refinancings, extensions, principal increases (other than due to any capitalization of interest or fees) or payments in respect of such Indebtedness shall be permitted except to the extent permitted by the Approved Budget, the DIP Orders or any other order of the Bankruptcy Court or as otherwise acceptable to the Agent and the Required Lenders;

(d) obligations of a Borrower in respect of Hedge Agreements entered into in order to manage existing or anticipated interest rate, exchange or commodity price risks and not for speculative purposes;

(e) Indebtedness of any Borrower to any Subsidiary and of any Subsidiary to any Borrower or any other Subsidiary, in each case, permitted under clause (h) of the definition of "Permitted Investments";

(f) guarantees by any Borrower of any liability or obligation of any Subsidiary and by any Subsidiary of any liability or obligation of any Borrower or any other Subsidiary to the extent permitted under clause (h) of the definition of "Permitted Investments";

(g) Indebtedness owed to any Person providing property, casualty, liability, or other insurance to any Loan Party or any of its Subsidiaries, so long as the amount of such Indebtedness is not in excess of the amount of the unpaid cost of, and shall be incurred only to defer the cost of, such insurance for the year in which such Indebtedness is incurred and such Indebtedness is outstanding only during such year, in each case, solely to the extent consistent with the Approved Budget and permitted by the DIP Orders;

(h) Indebtedness on account of bids, tenders, contracts (other than contracts for the payment of money), leases, regulatory or statutory obligations, surety and appeal and performance bonds and other obligations of like nature arising in the ordinary course of business, in each case, solely to the extent consistent with the Approved Budget and permitted by the DIP Orders;

(i) Prepetition Facility Obligations, solely to the extent existing on the Petition Date and subject to the terms of the DIP Orders;

(j) Prepetition Facility Adequate Protection Obligations, solely to the extent set forth in the DIP Orders;

(k) Indebtedness incurred pursuant to the First Day Orders or any other order entered by the Bankruptcy Court, in each case, solely to the extent permitted by the DIP Orders; and

(l) such other Indebtedness as the Agent and the Required Lenders may approve in their sole discretion.

"Permitted Investments" means:

(a) Cash Equivalents;

(b) interest-bearing demand or time deposits (including certificates of deposit and guaranteed investment certificates) which are insured by the Federal Deposit Insurance Corporation ("FDIC") or a similar U.S. federal insurance program; provided, however, that the Loan Parties may, in the ordinary course of their respective businesses, maintain in their disbursement accounts from time to time amounts in excess of then applicable FDIC or other program insurance limits;

(c) Investments existing on the Petition Date and set forth on Schedule 1.1D;

(d) advances to officers, directors and employees for expenses incurred or anticipated to be incurred in the ordinary course of business, solely to the extent consistent with the Approved Budget and permitted by the DIP Orders;

(e) [reserved];

(f) [reserved];

(g) [reserved];

(h) Investments (including loans or advances and guarantees of Indebtedness and other obligations and liabilities) made by any Loan Party in, to, or for the benefit of any Subsidiary and made by any Subsidiary in, to, or for the benefit of a Loan Party or any other Subsidiary; provided that (i) any such Investments made after the Petition Date shall be made solely to the extent consistent with the Approved Budget and permitted by the DIP Orders, (ii) any such Investments in the form of a loan or advance made by a Loan Party to any Subsidiary which is not a Loan Party shall be evidenced by a promissory note pledged pursuant to the Guaranty and Security Agreement, and (iii) any such Investment made by a Subsidiary which is not a Loan Party to any Loan Party shall be subordinated to the Obligations on terms reasonably satisfactory to the Agent or such non-Loan Party shall be a party to the Intercompany Subordination Agreement; provided further that any Investment made by a Loan Party in the form of a loan or advance to any Subsidiary or Affiliate that is a debtor in the Chapter 11 Cases and not a Loan Party shall be entitled to a superpriority administrative expense claim against such recipient debtor on terms satisfactory to Agent and as set forth in the DIP Orders;

(i) Investments (including debt obligations) received in connection with the bankruptcy or reorganization of suppliers and customers and in settlement of delinquent obligations of, and other disputes with, customers and suppliers arising in the ordinary course of business;

(j) Hedge Agreements entered into by the Borrowers relating to the Loans hereunder and other Hedge Agreements entered into in order to manage existing or anticipated interest rate, exchange or commodity price risks;

(k) [reserved];

(l) [reserved];

(m) Investments of cash deposits or pledges to secure obligations under workmen's compensation, social security or similar laws, or under unemployment insurance or to secure bids, tenders, contracts (other than contracts for the payment of money), leases, regulatory or statutory obligations, surety and appeal and performance bonds and other obligations of like nature arising in the ordinary course of business, solely to the extent consistent with the Approved Budget and permitted by the DIP Orders;

(n) [reserved];

(o) [reserved];

(p) [reserved];

(q) [reserved];

(r) such other Investments as the Agent and the Required Lenders may approve in their sole discretion.

"Permitted Liens" means:

(a) Liens granted to the Agent or the Lenders (or their Affiliates to secure Hedge Obligations) by the Loan Parties pursuant to any Loan Document or the DIP Orders securing the Obligations;

(b) Prepetition Facility Adequate Protection Liens, solely to the extent set forth in the DIP Orders;

(c) Liens listed on Schedule 1.1B, solely to the extent existing on the Petition Date;

(d) Liens on fixed or capital assets securing Indebtedness described in clause (c) of the definition of "Permitted Indebtedness" and permitted under Section 6.2; provided that such Liens do not at any time encumber any property other than the property financed by such Indebtedness, replacements thereof and additions and accessions to such property and the proceeds and the products thereof, customary security deposits, and other customary assets, rights, and properties approved by Agent in its Permitted Discretion;

(e) Liens of warehousemen, mechanics, materialmen, workers, repairmen, fillers, packers, processors, common carriers, landlords and other similar Liens arising by operation of law or otherwise, not waived in connection herewith, for amounts that are not yet due and payable or which are being diligently contested in good faith by the relevant Loan Party by appropriate proceedings; provided that in any such case an adequate reserve is being maintained by such Loan Party for the payment of same and such Liens are not prohibited by the DIP Orders;

(f) attachment or judgment Liens individually or in the aggregate not in excess of $10,000,000, exclusive of (i) any amounts that are duly bonded to the satisfaction of the Agent in its Permitted Discretion or (ii) any amount adequately covered by insurance as to which the insurance company has acknowledged in writing its obligations for coverage; provided that such Liens are not prohibited by the DIP Orders and do not result in an Event of Default;

(g) Liens for taxes, assessments or other governmental charges not yet due and payable or which are being diligently contested in good faith by a Loan Party by appropriate proceedings; provided that in any such case an adequate reserve is being maintained by such Loan Party for the payment of same in accordance with GAAP and such Liens are not prohibited by the DIP Orders;

(h) zoning ordinances, easements, covenants and other customary restrictions on the use of Real Property and other title exceptions that do not interfere in any material respect with the ordinary course of business;

(i) deposits or pledges to secure obligations under workmen's compensation, social security or similar laws, or under unemployment insurance, solely to the extent consistent with the Approved Budget and permitted by the DIP Orders;

(j) deposits or pledges to secure bids, tenders, contracts (other than contracts for the payment of money), leases, regulatory or statutory obligations, surety and appeal and performance bonds and other obligations of like nature arising in the ordinary course of business, solely to the extent consistent with the Approved Budget and permitted by the DIP Orders;

(k) [reserved];

(l) [reserved];

(m) Liens arising in favor of collecting banks in the ordinary course of business; and

(n) Liens permitted pursuant to the First Day Orders or any other order entered by the Bankruptcy Court, solely to the extent permitted by the DIP Orders.

"Permitted Variances" shall mean, with respect to any period, the unfavorable variance of the cumulative operating disbursements during such period shall not exceed 20%.

"Person" means natural persons, corporations, limited liability companies, limited partnerships, general partnerships, limited liability partnerships, joint ventures, trusts, land trusts, business trusts, or other organizations, irrespective of whether they are legal entities, and governments and agencies and political subdivisions thereof.

"Petition Date" has the meaning assigned to such term in the recitals hereto.

"Plan" means any chapter 11 plan of liquidation filed in the Chapter 11 Cases, including all related schedules, supplements, exhibits and orders, as applicable, which shall be approved in writing by the Agent (acting at the direction of the Required Lenders), which may be provided by email, and otherwise consistent with the DIP Orders.

"Platform" has the meaning specified therefor in Section 17.9(c) of this Agreement.

"Prepetition Facility Agent" means Wells Fargo Bank, National Association, in its capacity as Agent and collateral agent under the Prepetition Facility Credit Agreement.

"Prepetition Facility Collateral" means the "Collateral" as defined in the Prepetition Facility Credit Agreement.

"Prepetition Facility Credit Agreement" means the Third Amended and Restated Credit Agreement, dated as of November 1, 2022, by and among the Prepetition Facility Lenders, Wells Fargo Bank, National Association, as administrative agent and collateral agent, Republic National Distributing Company, LLC, as the Company, the Subsidiaries of the Company identified therein as Borrowers, and the Subsidiaries of the Company identified therein as Guarantors, as amended, restated, supplemented or otherwise modified prior to the Petition Date.

"Prepetition Facility Documents" means the "Loan Documents" as defined in the Prepetition Facility Credit Agreement.

"Prepetition Facility Obligations" means the "Obligations" as defined in the Prepetition Facility Credit Agreement.

"Prepetition Facility Priority Delayed Draw Term Loans" means the "Fourteenth Amendment Priority Delayed Draw Term Loans" as defined in the Prepetition Facility Credit Agreement.

"Prepetition Facility Revolving Loans" means the "Revolving Loans" as defined in the Prepetition Facility Credit Agreement.

"Prepetition Facility Secured Parties" means the Prepetition Facility Agent, the lenders under the Prepetition Facility Credit Agreement and the other secured parties under the Prepetition Facility Documents.

"Prepetition Facility Adequate Protection Obligations" shall mean the "Adequate Protection Obligations" (as defined in the DIP Orders) in respect of the Prepetition Facility Credit Agreement.

"Prepetition Facility Adequate Protection Liens" shall mean the "Adequate Protection Liens" (as defined in the DIP Orders) granted to the Prepetition Facility Credit Agreement.

"Prior Permitted Liens" means Permitted Liens as defined in the Prepetition Facility Credit Agreement.

"Professionals" means, collectively, the Debtor Professionals, the Lender Professionals and, solely if an Official Committee has been appointed in the Chapter 11 Cases, the professionals retained by such Official Committee.

"Pro Rata Share" means: (a) with respect to the DIP Revolving Facility, as to any DIP Revolving Lender, the percentage obtained by dividing (i) such DIP Revolving Lender's DIP Revolving Commitment by (ii) the aggregate DIP Revolving Commitments of all DIP Revolving Lenders; provided that, after termination of the DIP Revolving Commitments, such percentage shall be determined by reference to the outstanding DIP Revolving Loans held by such DIP Revolving Lender relative to all outstanding DIP Revolving Loans; (b) with respect to the DIP Term Loan Facility, as to any DIP Term Loan Lender, the percentage obtained by dividing (i) the outstanding principal amount of DIP Term Loans held by such DIP Term Loan Lender by (ii) the aggregate outstanding principal amount of all DIP Term Loans; and (c) with respect to all other matters, as to any Lender, the percentage obtained by dividing (i) the sum of such Lender's DIP Revolving Exposure, unfunded DIP Revolving Commitment and DIP Term Loan Exposure by (ii) the aggregate DIP Revolving Exposure, unfunded DIP Revolving Commitments and DIP Term Loan Exposure of all Lenders.

"Protective Advances" has the meaning specified therefor in Section 2.3(d)(i) of this Agreement.

"PTE" means a prohibited transaction class exemption issued by the DOL, as any such exemption may be amended from time to time.

"Public Lender" has the meaning specified therefor in Section 17.9(c) of this Agreement.

"QFC" has the meaning assigned to the term "qualified financial contract" in, and shall be interpreted in accordance with, 12 U.S.C. § 5390(c)(8)(D).

"QFC Credit Support" has the meaning specified therefor in Section 17.15 of this Agreement.

"Qualified Equity Interests" means and refers to any Equity Interests issued by Parent Borrower (and not by one or more of its Subsidiaries) that is not a Disqualified Equity Interest.

"Real Property" means any estates or interests in real property now owned or hereafter acquired by any Loan Party or one of its Subsidiaries and the improvements thereto.

"Real Property Collateral" means the Real Property identified on Schedule R-1 to this Agreement.

"Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

"Register" has the meaning set forth in Section 13.1(h) of this Agreement.

"Registered Loan" has the meaning set forth in Section 13.1(h) of this Agreement.

"Related Fund" means any Person (other than a natural person) that is engaged in making, purchasing, holding or investing in bank loans and similar extensions of credit in the ordinary course and that is administered, advised or managed by (a) a Lender, (b) an Affiliate of a Lender, or (c) an entity or an Affiliate of an entity that administers, advises or manages a Lender.

"Relevant Governmental Body" means the Board of Governors or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Board of Governors or the Federal Reserve Bank of New York, or any successor thereto.

"Remedial Action" means all actions taken to (a) clean up, remove, remediate, contain, treat, monitor, assess, evaluate, or in any way address Hazardous Materials in the indoor or outdoor environment, (b) prevent or minimize a release or threatened release of Hazardous Materials so they do not migrate or endanger or threaten to endanger public health or welfare or the indoor or outdoor environment, (c) restore or reclaim natural resources or the environment, (d) perform any pre-remedial studies, investigations, or post-remedial operation and maintenance activities, or (e) conduct any other actions with respect to Hazardous Materials required by Environmental Laws.

"Replacement Lender" has the meaning specified therefor in Section 2.13(b) of this Agreement.

"Report" has the meaning specified therefor in Section 15.16 of this Agreement.

"Reportable Event" means any of the events described in Section 4043(c) of ERISA and the regulations thereunder.

"Required Lenders" means, at any time, DIP Revolving Lenders holding at least 66.67% of the aggregate DIP Revolving Exposure and unfunded DIP Revolving Commitments of all DIP Revolving Lenders; provided, that (i) DIP Revolving Exposure and unfunded DIP Revolving Commitments of any Defaulting Lender shall be disregarded in the determination of Required Lenders), and (ii) at any time that Wells Fargo Bank, National Association is a Lender, "Required Lenders" must include Wells Fargo Bank, National Association.

"Resolution Authority" means an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

"Restricted Payment" means (a) any declaration or payment of any dividend or the making of any other payment or distribution, directly or indirectly, on account of Equity Interests issued by Parent Borrower or any of its Subsidiaries (including any payment in connection with any merger or consolidation involving Parent Borrower) or to the direct or indirect holders of Equity Interests issued by Parent Borrower or any of its Subsidiaries in their capacity as such (other than dividends or distributions payable in Qualified Equity Interests issued by Parent Borrower or any of its Subsidiaries), or (b) any purchase, redemption, making of any sinking fund or similar payment, or other acquisition or retirement for value (including in connection with any merger or consolidation involving Parent Borrower) any Equity Interests issued by Parent Borrower or any of its Subsidiaries, or (c) any making of any payment to retire, or to obtain the

surrender of, any outstanding warrants, options, or other rights to acquire Equity Interests of Parent Borrower now or hereafter outstanding, or (d) any payment to any Affiliate of any Loan Party, except to the extent expressly permitted by clause (a) of Section 6.8, the Approved Budget and the DIP Orders.

"RNDC Alaska" means RNDC Alaska, LLC, an Alaskan limited liability company.

"RNDC Canada" means RNDC Canada Holdings, Ltd., an Ontario corporation.

"RNDC Nebraska" means Republic National Distributing Company, LLC, a Nebraska limited liability company.

"RNDC New York" means RNDC New York, LLC, a New York limited liability company.

"RNDC Shared Services" means RNDC Shared Services, LLC, a Delaware limited liability company.

"Roll-Up Amount" means an amount equal to the sum of (x) all of the Prepetition Facility Priority Delayed Draw Term Loans and (y) $108,686,827.95 of the Prepetition Facility Revolving Loans (for the avoidance of doubt, the portion not so rolled up shall include 100% of the FILO Revolving Loans (as defined in the Prepetition Facility Credit Agreement)), in each case, outstanding immediately prior to the effectiveness of this Agreement, that are rolled up into DIP Term Loans, with respect to clause (x), on the Closing Date, and with respect to clause (y), upon entry of the Final DIP/Cash Collateral Order, pursuant to this Agreement and the DIP Orders; provided, that, unless otherwise expressly provided in the DIP Orders, the Roll-Up Amount shall not include contingent reimbursement obligations in respect of Existing Letters of Credit except to the extent of unreimbursed draws thereunder.

"Sanctioned Entity" means (a) a country or territory or a government of a country or territory, (b) an agency of the government of a country or territory, (c) an organization directly or indirectly controlled by a country or territory or its government, or (d) a Person resident in or determined to be resident in a country or territory, in each case of clauses (a) through (d) that is a target of Sanctions, including a target of any country sanctions program administered and enforced by OFAC.

"Sanctioned Person" means, at any time (a) any Person named on the list of Specially Designated Nationals and Blocked Persons maintained by OFAC, OFAC's consolidated Non-SDN list or any other Sanctions-related list maintained by any Governmental Authority, (b) a Person or legal entity that is a target of Sanctions, (c) any Person operating, organized or resident in a Sanctioned Entity, or (d) any Person directly or indirectly owned or controlled (individually or in the aggregate) by or acting on behalf of any such Person or Persons described in clauses (a) through (c) above.

"Sanctions" means individually and collectively, respectively, any and all economic sanctions, trade sanctions, financial sanctions, sectoral sanctions, secondary sanctions, trade embargoes anti-terrorism laws and other sanctions laws, regulations or embargoes, including those imposed, administered or enforced from time to time by: (a) the United States of America, including those administered by OFAC, the U.S. Department of State, the U.S. Department of Commerce, or through any existing or future executive order, (b) the United Nations Security Council, (c) the European Union or any European Union member state, (d) His Majesty's Treasury of the United Kingdom, or (e) any other Governmental Authority with jurisdiction over any member of Lender Group or any Loan Party or any of their respective Subsidiaries or Affiliates.

"S&P" has the meaning specified therefor in the definition of Cash Equivalents.

"SEC" means the United States Securities and Exchange Commission and any successor thereto.

"Securities Account" means a securities account (as that term is defined in the Code).

"Securities Act" means the Securities Act of 1933, as amended from time to time, and any successor statute.

"Simple SOFR Adjustment" means a percentage equal to 0.10% per annum.

"Simple SOFR Determination Day" has the meaning specified therefor in the definition of Adjusted Daily Simple SOFR.

"Simple SOFR Rate Day" has the meaning specified therefor in the definition of Adjusted Daily Simple SOFR.

"SOFR" means a rate equal to the secured overnight financing rate as administered by the SOFR Administrator.

"SOFR Administrator" means the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

"SOFR Administrator's Website" means the website of the Federal Reserve Bank of New York, currently at http://www.newyorkfed.org, or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.

"SOFR Loan" means any Daily Simple SOFR Loan.

"Specified Defaults" has the meaning given to such term in that certain Forbearance and Twenty-Second Amendment to Third Amended and Restated Credit Agreement, dated as of July 17, 2026 by and among the Company, the subsidiaries of the Company party thereto, the lenders party thereto and the Agent, which amended the Prepetition Facility Credit Agreement.

"South Carolina Joint Venture" means RNDC South Carolina LLC.

"Subsidiary" means, as to any Person, (a) any corporation more than 50% of whose Capital Stock of any class or classes having by the terms thereof ordinary voting power to elect a majority of the directors of such corporation (irrespective of whether or not at the time, any class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency) is at the time owned by such Person directly or indirectly through Subsidiaries, (b) any partnership, limited liability company, association, joint venture or other entity in which such Person directly or indirectly through Subsidiaries has more than a 50% interest in the total capital, total income and/or total ownership interests of such entity at any time, and (c) any partnership in which such Person is a general partner; provided that none of NDC General, LLC, Republic National Distributing Company, LLC (f/k/a Republic National Distributing Company of Kentucky, LLC), Republic National Distributing of Indiana, LLC, the South Carolina Joint Venture, the Michigan Joint Venture, the Oklahoma Joint Venture, the Liberation Joint Venture, RNDC New York, the Idaho Joint Venture, nor the Heritage Joint Venture shall be deemed a Subsidiary of the Company. For the avoidance of doubt, no Subsidiary of any Joint Venture shall be a Subsidiary of Parent Borrower.

"Supported QFC" has the meaning specified therefor in Section 17.15 of this Agreement.

"Swap Obligation" means, with respect to any Loan Party, any obligation to pay or perform under any agreement, contract or transaction that constitutes a "swap" within the meaning of section 1a(47) of the Commodity Exchange Act.

"Tax Lender" has the meaning specified therefor in Section 14.2(a) of this Agreement.

"Taxes" means any taxes, levies, imposts, duties, fees, assessments or other charges of whatever nature now or hereafter imposed by any jurisdiction or by any political subdivision or taxing authority thereof or therein, and all interest, penalties or similar liabilities with respect thereto.

"Test Period" shall mean each one-week period starting the second full calendar week after the Closing Date.

"Trademark Security Agreement" has the meaning specified therefor in the Guaranty and Security Agreement.

"UK Financial Institution" means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended form time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

"UK Resolution Authority" means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

"Unadjusted Benchmark Replacement" means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

"United States" means the United States of America.

"Unused Line Fee" means the fee required to be paid to the Agent for the benefit of each Lender on the first day of each calendar quarter, in arrears, as partial compensation for extending such Lender's DIP Revolving Commitment, and shall be determined by multiplying (a) the positive amount, if any, by which such Lender's (i) the DIP Revolving Commitment exceeds (ii) the average daily outstanding amount of such Lender's DIP Revolving Exposure, by (b) a per annum rate of interest equal to 0.50% for the number of days in said calendar quarter.

"U.S. Government Securities Business Day" means any day except for (i) a Saturday, (ii) a Sunday or (iii) a day on which the Securities Industry and Financial Markets Association, or any successor thereto, recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities; provided, that for purposes of notice requirements in Sections 2.3(a) and 2.12(b), in each case, such day is also a Business Day.

"U.S. Special Resolution Regimes" has the meaning specified therefor in Section 17.15 of this Agreement.

"Variance Report" has the meaning assigned thereto in Section 5.1(q).

"Variance Report Deadline" means 5:00 p.m. (New York City time) on Friday of each week, commencing with the Friday of the second full calendar week following the week in which the Closing Date occurs.

"Voidable Transfer" has the meaning specified therefor in Section 17.8 of this Agreement.

"Voting Stock" means, with respect to any Person, Capital Stock issued by such Person the holders of which are ordinarily, in the absence of contingencies, entitled to vote for the election of directors (or persons performing similar functions) of such Person, even though the right so to vote has been suspended by the happening of such a contingency.

"Wells Fargo" means Wells Fargo Bank, National Association, a national banking association.

"Withdrawal Liability" means liability with respect to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

"Write-Down and Conversion Powers" means, (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

1.2 **Accounting Terms**. All accounting terms not specifically defined herein shall be construed in accordance with GAAP; provided, that if Parent Borrower notifies Agent that Borrowers request an amendment to any provision hereof to eliminate the effect of any Accounting Change occurring after the Closing Date or in the application thereof on the operation of such provision (or if Agent notifies Parent Borrower that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such Accounting Change or in the application thereof, then Agent and Borrowers agree that they will negotiate in good faith amendments to the provisions of this Agreement that are directly affected by such Accounting Change with the intent of having the respective positions of the Lenders and Borrowers after such Accounting Change conform as nearly as possible to their respective positions immediately before such Accounting Change took effect and, until any such amendments have been agreed upon and agreed to by the Required Lenders, the provisions in this Agreement shall be calculated as if no such Accounting Change had occurred. When used herein, the term "financial statements" shall include the notes and schedules thereto. Whenever the term "Borrowers" is used in respect of any financial calculation, reporting requirement or related definition, it shall be understood to mean the Loan Parties and their Subsidiaries on a consolidated basis, unless the context clearly requires otherwise. Notwithstanding anything to the contrary contained herein, all financial statements delivered hereunder shall be prepared, and all financial calculations contained herein shall be calculated, without giving effect to any election under the Statement of Financial Accounting Standards Board's Accounting Standards Codification Topic 825 (or any similar accounting principle) permitting a Person to value its financial liabilities or Indebtedness at the fair value thereof.

1.3 **Code**. Any terms used in this Agreement that are defined in the Code shall be construed and defined as set forth in the Code unless otherwise defined herein; provided, that to the extent that the Code is used to define any term herein and such term is defined differently in different Articles of the Code, the definition of such term contained in Article 9 of the Code shall govern.

1.4 **Construction**. Unless the context of this Agreement or any other Loan Document clearly requires otherwise, references to the plural include the singular, references to the singular include the plural, the terms "includes" and "including" are not limiting, and the term "or" has, except where otherwise indicated, the inclusive meaning represented by the phrase "and/or." The words "hereof," "herein," "hereby," "hereunder," and similar terms in this Agreement or any other Loan Document refer to this Agreement or such other Loan Document, as the case may be, as a whole and not to any particular provision of this Agreement or such other Loan Document, as the case may be. Section, subsection, clause, schedule, and exhibit references herein are to this Agreement unless otherwise specified. Any reference in this Agreement or in any other Loan Document to any agreement, instrument, or document shall include all alterations, amendments, changes, extensions, modifications, renewals, replacements, substitutions, joinders, and supplements thereto and thereof, as applicable, subject to any restrictions on such alterations, amendments, changes, extensions, modifications, renewals, replacements, substitutions, joinders, and supplements set forth herein or in the DIP Orders. The words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties.

Any reference herein or in any other Loan Document to the satisfaction, repayment, or payment in full of the Obligations shall mean (a) with respect to the DIP Revolving Loans and all Obligations related to the DIP Revolving Facility, the payment or repayment in full in immediately available funds of (x) the principal amount of, and interest accrued and unpaid with respect to, all outstanding DIP Revolving Loans, together with the payment of any premium applicable to the repayment of the DIP Revolving Loans, (y) all Lender Group Expenses that have accrued and are unpaid regardless of whether demand has been made therefor, and (z) all fees or charges that have accrued hereunder or under any other Loan Document (including the Unused Line Fee) and are unpaid, (b) the roll-up the Prepetition Facility Obligations as set forth in the DIP Orders or any other order of the Bankruptcy Court reasonably satisfactory to the Agent and and (c) the termination of all of the Commitments of the Lenders. Any reference herein to any Person shall be construed to include such Person's successors and permitted assigns. Any requirement of a writing contained herein or in any other Loan Document shall be satisfied by the transmission of a Record.

1.5 **Time References**. Unless the context of this Agreement or any other Loan Document clearly requires otherwise, all references to time of day refer to New York City time. For purposes of the computation of a period of time from a specified date to a later specified date, unless otherwise expressly provided, the word "from" means "from and including" and the words "to" and "until" each means "to and including"; provided, that with respect to a computation of fees or interest payable to Agent or any Lender, such period shall in any event consist of at least one full day.

1.6 **Schedules and Exhibits**. All of the schedules and exhibits attached to this Agreement shall be deemed incorporated herein by reference.

1.7 **Divisions**. For all purposes under the Loan Documents, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction's laws): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized on the first date of its existence by the holders of its Equity Interests at such time.

1.8 **Rates**. Agent does not warrant or accept any responsibility for, and shall not have any liability with respect to, (a) the continuation of, administration of, submission of, calculation of or any other matter related to Adjusted Daily Simple SOFR, SOFR or any other Benchmark, any component definition thereof or rates referred to in the definition thereof, or with respect to any alternative, successor or replacement rate thereto, including any then-current Benchmark or any Benchmark Replacement, including

whether the composition or characteristics of any such alternative, successor or replacement rate, including any Benchmark Replacement, as it may or may not be adjusted pursuant to Section 2.12(c), will be similar to, or produce the same value or economic equivalence of, or have the same volume or liquidity as, Adjusted Daily Simple SOFR, SOFR or any other Benchmark, prior to its discontinuance or unavailability, or (b) the effect, implementation or composition of any Conforming Changes. Agent and its affiliates or other related entities may engage in transactions that affect the calculation of Adjusted Daily Simple SOFR, SOFR, any alternative, successor or replacement rate, including any Benchmark Replacement, or any relevant adjustments thereto and such transactions may be adverse to a Borrower. Agent may select information sources or services in its reasonable discretion to ascertain Adjusted Daily Simple SOFR, SOFR or any other Benchmark, any component definition thereof or rates referred to in the definition thereof, in each case pursuant to the terms of this Agreement, and shall have no liability to any Borrower, any Lender or any other Person for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses, whether in tort, contract or otherwise and whether at law or in equity, for any error or calculation of any such rate, or component thereof, provided by any such information source or service.

2. **LOANS AND TERMS OF PAYMENT**.

2.1 **DIP Revolving Loans**.

(a) **DIP Revolving Commitments**. Subject to the terms and conditions of this Agreement (including Section 3.2) and the DIP Orders, each DIP Revolving Lender severally agrees to make DIP Revolving Loans to Borrowers from time to time on and after the Closing Date and prior to the Commitment Termination Date; provided, that no DIP Revolving Lender shall be required to make any DIP Revolving Loan if, after giving effect thereto:

(i) such DIP Revolving Lender's DIP Revolving Exposure would exceed such DIP Revolving Lender's DIP Revolving Commitment;

(ii) the DIP Revolving Exposure would exceed the DIP Revolving Committed Amount; or

(iii) prior to the entry of the Final DIP/Cash Collateral Order, the aggregate DIP Revolving Exposure would exceed $50,000,000.

(b) **Frequency of Borrowings**. Borrowings of DIP Revolving Loans shall be made no more frequently than once per calendar week unless otherwise agreed by Agent.

(c) **Revolving Nature**. Amounts borrowed as DIP Revolving Loans may be repaid and, subject to the terms and conditions of this Agreement and the DIP Orders, reborrowed prior to the Commitment Termination Date.

2.2 **DIP Term Loans**.

(a) **Roll-Up**. Subject to entry of the Interim DIP/Cash Collateral Order and the terms of the DIP Orders, (x) on the Closing Date, all of the Prepetition Facility Priority Delayed Draw Term Loans and (y) upon entry of the Final DIP/Cash Collateral Order, a portion of the aggregate amount of the Prepetition Facility Revolving Loans, in each case, shall be rolled up into DIP Term Loans in an aggregate principal amount equal to the Roll-Up Amount. The DIP Term Loan Borrowing shall be deemed made by the DIP Term Loan Lenders to Borrowers on the Closing Date without any funding request, notice of borrowing, cash funding or further action by any Person. For the avoidance of doubt, the Borrowers of the

DIP Term Loans shall be the same Persons as the Borrowers on the Prepetition Facility Priority Delayed Draw Term Loans and the Prepetition Facility Revolving Loans.

(b) **No New Cash Proceeds**. The DIP Term Loans represent the roll-up of the Prepetition Facility Obligations and shall not result in the funding of new cash proceeds to Borrowers.

(c) **No Reborrowings**. Any amount of DIP Term Loans that is repaid or prepaid may not be reborrowed.

(d) **Maturity**. The outstanding unpaid principal balance and all accrued and unpaid interest on the DIP Term Loans shall be due and payable on the earlier of (i) the Maturity Date and (ii) the date on which the DIP Term Loans otherwise become due and payable pursuant to the terms of this Agreement or the DIP Orders.

2.3 **Borrowing Procedures for DIP Revolving Loans**.

(a) **Procedure for Borrowing DIP Revolving Loans**. Each DIP Revolving Borrowing shall be made by a written request by an Authorized Person delivered to Agent, which may be delivered through Agent's electronic platform or portal, and received by Agent no later than 12:00 p.m. on the Business Day that is one Business Day prior to the requested Funding Date, specifying (i) the amount of such DIP Revolving Borrowing (which shall be at least $1,000,000 or $1,000,000 increments thereof), (ii) [reserved] and (iii) the requested Funding Date, which shall be a Business Day; provided that Agent may, in its sole discretion, elect to accept as timely requests that are received later than 12:00 p.m. on the applicable Business Day; provided, that, DIP Revolving Borrowings may not be made more than once per calendar week (or twice, with the prior written consent of the Agent). All Borrowing requests which are not made on-line via Agent's electronic platform or portal shall be subject to Agent's authentication process, with results satisfactory to Agent, prior to the funding of any such requested DIP Revolving Loan. Notwithstanding anything herein to the contrary, the Borrowers shall only be permitted to request Daily Simple SOFR Loans.

(b) **[Reserved]**.

(c) **Making of DIP Revolving Loans**.

(i) After receipt of a request for a DIP Revolving Borrowing pursuant to Section 2.3(a), Agent shall notify the DIP Revolving Lenders by telecopy, telephone, email, or other electronic form of transmission, of the requested DIP Revolving Borrowing. If Agent has notified the DIP Revolving Lenders of a requested DIP Revolving Borrowing on the Business Day that is one Business Day prior to the Funding Date, then each DIP Revolving Lender shall make the amount of such DIP Revolving Lender's Pro Rata Share of the requested DIP Revolving Borrowing available to Agent in immediately available funds, to Agent's Account, not later than 1:00 p.m. on the Business Day that is the requested Funding Date. After Agent's receipt of the proceeds of such DIP Revolving Loans from the DIP Revolving Lenders, Agent shall make the proceeds thereof available to Borrowers on the applicable Funding Date by transferring immediately available funds equal to such proceeds received by Agent to the Designated Account; provided that no DIP Revolving Lender shall have an obligation to make any DIP Revolving Loan if one or more of the applicable conditions precedent set forth in Section 3 will not be satisfied on the requested Funding Date for the applicable DIP Revolving Borrowing unless such condition has been waived.

(ii) Unless Agent receives notice from a DIP Revolving Lender prior to 9:30 a.m. on the Business Day that is the requested Funding Date relative to a requested DIP Revolving

Borrowing as to which Agent has notified the DIP Revolving Lenders that such DIP Revolving Lender will not make available as and when required hereunder to Agent for the account of Borrowers the amount of that DIP Revolving Lender's Pro Rata Share of the DIP Revolving Borrowing, Agent may assume that each DIP Revolving Lender has made or will make such amount available to Agent in immediately available funds on the Funding Date and Agent may, but shall not be so required, in reliance upon such assumption, make available to Borrowers a corresponding amount. If, on the requested Funding Date, any DIP Revolving Lender shall not have remitted the full amount that it is required to make available to Agent in immediately available funds and if Agent has made available to Borrowers such amount on the requested Funding Date, then such DIP Revolving Lender shall make the amount of such DIP Revolving Lender's Pro Rata Share of the requested DIP Revolving Borrowing available to Agent in immediately available funds, to Agent's Account, no later than 1:00 p.m. on the Business Day that is the first Business Day after the requested Funding Date. If any DIP Revolving Lender shall not remit the full amount that it is required to make available to Agent in immediately available funds as and when required hereby and if Agent has made available to Borrowers such amount, then that DIP Revolving Lender shall be obligated to immediately remit such amount to Agent, together with interest at the Defaulting Lender Rate for each day until the date on which such amount is so remitted.

(d) **Protective Advances**.

(i) Any contrary provision of this Agreement or any other Loan Document notwithstanding (but subject to Section 2.3(d)(iv)), at any time (A) after the occurrence and during the continuance of a Default or an Event of Default, or (B) that any of the other applicable conditions precedent set forth in Section 3 are not satisfied, Agent hereby is authorized by Borrowers and the Lenders, from time to time, in Agent's sole discretion, to make DIP Revolving Loans to, or for the benefit of, Borrowers, on behalf of the DIP Revolving Lenders, that Agent, in its Permitted Discretion, deems necessary or desirable (1) to preserve or protect the Collateral, or any portion thereof, or (2) to enhance the likelihood of repayment of the Obligations (other than the Bank Product Obligations) (the DIP Revolving Loans described in this Section 2.3(d)(i) shall be referred to as "Protective Advances"). Agent's authorization to make Protective Advances may be revoked at any time by the Required Lenders delivering written notice of such revocation to Agent. Any such revocation shall become effective prospectively upon Agent's receipt thereof. Notwithstanding the foregoing, the aggregate amount of all Protective Advances outstanding at any one time shall not exceed $7,500,000.

(ii) [Reserved].

(iii) Each Protective Advance shall be deemed to be a DIP Revolving Loan hereunder. Prior to Settlement of any Extraordinary Advance, all payments with respect thereto, including interest thereon, shall be payable to Agent solely for its own account. Each DIP Revolving Lender shall be obligated to settle with Agent as provided in Section 2.3(e) (or Section 2.3(g), as applicable) for the amount of such Lender's Pro Rata Share of any Protective Advance. The Protective Advances shall be repayable on demand, secured by Agent's Liens, constitute Obligations hereunder, and bear interest at the rate applicable from time to time to DIP Revolving Loans that are Base Rate Loans. The provisions of this Section 2.3(d) are for the exclusive benefit of Agent, Swing Lender, and the Lenders and are not intended to benefit Borrowers (or any other Loan Party) in any way.

(iv) Notwithstanding anything contained in this Agreement or any other Loan Document to the contrary, no Protective Advance may be made by Agent if such Protective Advance would cause the aggregate DIP Revolving Exposure to exceed the aggregate DIP Revolving Commitments or any Lender's Pro Rata Share of the DIP Revolving Exposure to exceed such Lender's DIP Revolving Commitments; provided that Agent may make Protective Advances in excess of the foregoing limitation so long as such Protective Advances that cause the aggregate DIP Revolving Exposure to exceed the aggregate

DIP Revolving Commitments or a Lender's Pro Rata Share of the DIP Revolving Exposure to exceed such Lender's DIP Revolving Commitments are for Agent's sole and separate account and not for the account of any Lender. No Lender shall have an obligation to settle with Agent for such Protective Advances that cause the DIP Revolving Exposure to exceed the aggregate DIP Revolving Commitments or a Lender's Pro Rata Share of the DIP Revolving Exposure to exceed such Lender's DIP Revolving Commitment as provided in Section 2.3(e) (or Section 2.3(g), as applicable).

(e) **Settlement**. It is agreed that each Lender's funded portion of the DIP Revolving Loans is intended by the Lenders to equal, at all times, such Lender's Pro Rata Share of the outstanding DIP Revolving Loans. Such agreement notwithstanding, Agent and the other Lenders agree (which agreement shall not be for the benefit of Borrowers) that in order to facilitate the administration of this Agreement and the other Loan Documents, settlement among the Lenders as to the DIP Revolving Loans (including Protective Advances) shall take place on a periodic basis in accordance with the following provisions:

(i) Agent shall request settlement ("Settlement") with the Lenders on a monthly basis, or on a more frequent basis if so determined by Agent in its sole discretion (1) for itself, with respect to the outstanding Protective Advances, and (2) with respect to any Loan Party's or any of their Subsidiaries' payments or other amounts received, as to each by notifying the Lenders by telecopy, telephone, or other similar form of transmission, of such requested Settlement, no later than 5:00 p.m. on the Business Day immediately prior to the date of such requested Settlement (the date of such requested Settlement being the "Settlement Date"). Such notice of a Settlement Date shall include a summary statement of the amount of outstanding DIP Revolving Loans (including Protective Advances) for the period since the prior Settlement Date. Subject to the terms and conditions contained herein (including Section 2.3(g)): (y) if the amount of the DIP Revolving Loans (including Protective Advances) made by a Lender that is not a Defaulting Lender exceeds such Lender's Pro Rata Share of the DIP Revolving Loans (including Protective Advances) as of a Settlement Date, then Agent shall, by no later than 3:00 p.m. on the Settlement Date, transfer in immediately available funds to a Deposit Account of such Lender (as such Lender may designate), an amount such that each such Lender shall, upon receipt of such amount, have as of the Settlement Date, its Pro Rata Share of the DIP Revolving Loans (including Protective Advances), and (z) if the amount of the DIP Revolving Loans (including Protective Advances) made by a Lender is less than such Lender's Pro Rata Share of the DIP Revolving Loans (including Protective Advances) as of a Settlement Date, such Lender shall no later than 3:00 p.m. on the Settlement Date transfer in immediately available funds to Agent's Account, an amount such that each such Lender shall, upon transfer of such amount, have as of the Settlement Date, its Pro Rata Share of the DIP Revolving Loans (including Protective Advances). Such amounts made available to Agent under clause (z) of the immediately preceding sentence shall be applied against the amounts of the applicable Protective Advances and shall constitute DIP Revolving Loans of such Lenders. If any such amount is not made available to Agent by any Lender on the Settlement Date applicable thereto to the extent required by the terms hereof, Agent shall be entitled to recover for its account such amount on demand from such Lender together with interest thereon at the Defaulting Lender Rate.

(ii) In determining whether a Lender's balance of the DIP Revolving Loans (including Protective Advances) is less than, equal to, or greater than such Lender's Pro Rata Share of the DIP Revolving Loans (including Protective Advances) as of a Settlement Date, Agent shall, as part of the relevant Settlement, apply to such balance the portion of payments actually received in good funds by Agent with respect to principal, interest, fees payable by Borrowers and allocable to the Lenders hereunder, and proceeds of Collateral.

(iii) Between Settlement Dates, Agent, to the extent Protective Advances are outstanding, may retain any payments or other amounts received by Agent, that in accordance with the

terms of this Agreement would be applied to the reduction of the DIP Revolving Loans, for application to the Protective Advances. During the period between Settlement Dates, Agent and each applicable Lender shall be entitled to interest at the applicable rate or rates payable under this Agreement on the daily amount of funds employed by Agent or the Lenders, as applicable.

(iv) Anything in this Section 2.3(e) to the contrary notwithstanding, in the event that a Lender is a Defaulting Lender, Agent shall be entitled to refrain from remitting settlement amounts to the Defaulting Lender and, instead, shall be entitled to elect to implement the provisions set forth in Section 2.3(g).

(f) **Notation**. Consistent with Section 13.1(h), Agent, as a non-fiduciary agent for Borrowers, shall maintain a register showing the principal amount and stated interest of the DIP Revolving Loans and DIP Term Loans owing to each Lender, and the interests therein of each Lender, from time to time and such register shall, absent manifest error, conclusively be presumed to be correct and accurate.

(g) **Defaulting Lenders**. Notwithstanding the provisions of Section 2.4, Agent shall not be obligated to transfer to a Defaulting Lender any payments made by Borrowers to Agent for the Defaulting Lender's benefit or any proceeds of Collateral that would otherwise be remitted hereunder to the Defaulting Lender, and, in the absence of such transfer to the Defaulting Lender, Agent shall transfer any such payments (i) first, to Agent to the extent of any Extraordinary Advances that were made by Agent and that were required to be, but were not, paid by Defaulting Lender, (ii) second, to each Non-Defaulting Lender ratably in accordance with their applicable Pro Rata Shares, but only to the extent that such Defaulting Lender's portion of a DIP Revolving Loan or other funding obligation was funded by such other Non-Defaulting Lender, (iii) third, in Agent's sole discretion, to a suspense account maintained by Agent, the proceeds of which shall be retained by Agent and may be made available to be advanced to or for the benefit of Borrowers, upon the request of Borrowers and subject to the conditions set forth in Section 3, as if such Defaulting Lender had made its portion of DIP Revolving Loans or other funding obligations hereunder, and (iv) fourth, from and after the date on which all other Obligations have been paid in full, to such Defaulting Lender in accordance with Section 2.4. Subject to the foregoing, Agent may hold and, in its discretion, advance to Borrowers for the account of such Defaulting Lender the amount of all such payments received and retained by Agent for the account of such Defaulting Lender. Solely for the purposes of voting or consenting to matters with respect to the Loan Documents, including the calculation of Pro Rata Share in connection therewith, such Defaulting Lender shall be deemed not to be a "Lender" and such Lender's Commitment shall be deemed to be zero; provided that the foregoing shall not apply to any matters governed by Section 14.1(a)(i) through (iii). The provisions of this Section 2.3(g) shall remain effective with respect to such Defaulting Lender until the earlier of (y) the date on which all of the Non-Defaulting Lenders, Agent, and Borrowers shall have waived, in writing, the application of this Section 2.3(g) to such Defaulting Lender, or (z) the date on which such Defaulting Lender makes payment of all amounts that it was obligated to fund hereunder, pays to Agent all amounts owing by Defaulting Lender in respect of the amounts that it was obligated to fund hereunder, and, if requested by Agent, provides adequate assurance of its ability to perform its future obligations hereunder (on which earlier date, so long as no Event of Default has occurred and is continuing, any remaining cash collateral held by Agent pursuant to Section 2.3(g)(ii) shall be released to Borrowers). The operation of this Section 2.3(g) shall not be construed to increase or otherwise affect the Commitment of any Lender, to relieve or excuse the performance by such Defaulting Lender or any other Lender of its duties and obligations hereunder, or to relieve or excuse the performance by any Borrower of its duties and obligations hereunder to Agent or to the Lenders other than such Defaulting Lender. Any failure by a Defaulting Lender to fund amounts that it was obligated to fund hereunder shall constitute a material breach by such Defaulting Lender of this Agreement and shall entitle Borrowers, at their option, upon written notice to Agent, to arrange for a substitute Lender to assume the Commitment of such Defaulting Lender, such substitute Lender to be reasonably acceptable to Agent. In connection with the arrangement of such a substitute Lender, the

Defaulting Lender shall have no right to refuse to be replaced hereunder, and agrees to execute and deliver a completed form of Assignment and Acceptance in favor of the substitute Lender (and agrees that it shall be deemed to have executed and delivered such document if it fails to do so) subject only to being paid its share of the outstanding Obligations (other than Bank Product Obligations, but including all interest, fees, and other amounts that may be due and payable in respect thereof); provided, that any such assumption of the Commitment of such Defaulting Lender shall not be deemed to constitute a waiver of any of the Lender Groups' or Borrowers' rights or remedies against any such Defaulting Lender arising out of or in relation to such failure to fund. In the event of a direct conflict between the priority provisions of this Section 2.3(g) and any other provision contained in this Agreement or any other Loan Document, it is the intention of the parties hereto that such provisions be read together and construed, to the fullest extent possible, to be in concert with each other. In the event of any actual, irreconcilable conflict that cannot be resolved as aforesaid, the terms and provisions of this Section 2.3(g) shall control and govern.

(h) **Independent Obligations**. All DIP Revolving Loans shall be made by the DIP Revolving Lenders contemporaneously and in accordance with their Pro Rata Shares. It is understood that (i) no DIP Revolving Lender shall be responsible for any failure by any other DIP Revolving Lender to perform its obligation to make any DIP Revolving Loan hereunder, nor shall any Commitment of any DIP Revolving Lender be increased or decreased as a result of any failure by any other DIP Revolving Lender to perform its obligations hereunder, and (ii) no failure by any DIP Revolving Lender to perform its obligations hereunder shall excuse any other DIP Revolving Lender from its obligations hereunder.

2.4 **Payments; Prepayments; Cash Sweep**.

(a) **Payments by Borrowers**.

(i) Except as otherwise expressly provided herein, all payments by Borrowers shall be made to Agent's Account for the account of the Lender Group and shall be made in immediately available funds without deduction, withholding, setoff or counterclaim, no later than 1:30 p.m. on the date specified herein. Any payment received by Agent in immediately available funds in Agent's Account later than 1:30 p.m. shall be deemed to have been received, unless Agent, in its sole discretion, elects to credit it on the date received, on the following Business Day and any applicable interest or fee shall continue to accrue until such following Business Day.

(ii) Unless Agent receives notice from Borrowers prior to the date on which any payment is due to the Lenders that Borrowers will not make such payment in full as and when required, Agent may assume that Borrowers have made, or will make, such payment in full to Agent on such date in immediately available funds and Agent may, but shall not be so required, in reliance upon such assumption, distribute to each Lender on such due date an amount equal to the amount then due such Lender. If and to the extent Borrowers do not make such payment in full to Agent on the date when due, each Lender severally shall repay to Agent on demand such amount distributed to such Lender, together with interest thereon at the Defaulting Lender Rate for each day from the date such amount is distributed to such Lender until the date repaid.

(b) **Cash Sweep to DIP Revolving Loans**. Subject in all respects to the DIP Orders and the Carve-Out, prior to the date on which the DIP Revolving Commitments have been terminated and all DIP Revolving Loans and all Obligations related to the DIP Revolving Facility, including all fees, expenses and other amounts owing to Agent, have been repaid in full in cash, the Loan Parties shall, immediately upon receipt thereof, deliver one hundred percent (100%) of all cash (or Net Cash Proceeds, to the extent such cash is received or receivable in connection with a transaction contemplated by such definition) received or receivable by or on behalf of any Loan Party during the pendency of the Chapter 11 Cases, whether from Accounts, sale of Inventory, sale of joint venture interests, sale of other assets,

settlements, insurance, condemnation, casualty proceeds or otherwise, to Agent for application to the outstanding DIP Revolving Loans, subject to clause (c) below with respect to any excess proceeds. Any DIP Revolving Loans repaid pursuant to this Section 2.4(b) may be reborrowed pursuant to Section 2.1(c).

(c) **Blocked Account if No DIP Revolving Loans Outstanding**. If any cash (or Net Cash Proceeds, to the extent such cash is received or receivable in connection with a transaction contemplated by such definition) is received or receivable by or on behalf of any Loan Party during the pendency of the Chapter 11 Cases at a time when no DIP Revolving Loans or Obligations in respect thereof are outstanding, such cash shall be deposited into an account maintained with Agent and subject to Agent's sole dominion and control. All amounts held in such account shall constitute Collateral securing the Obligations and shall be applied to repay future DIP Revolving Loans or to pay fees, expenses and other amounts owing to Agent as and when such DIP Revolving Loans are made or such fees, expenses or other amounts are incurred, and to pay amounts owing in respect of any Bank Product Obligations.

(d) **Application After DIP Revolving Facility Payoff**. After such time as the DIP Revolving Commitments have been terminated and all DIP Revolving Loans and all Obligations related to the DIP Revolving Facility, including all fees, expenses and other amounts owing to Agent, have been repaid in full in cash and all Bank Product Obligations are paid, satisfied in full or otherwise cash collateralized in a manner satisfactory to the applicable Bank Product Provider, Agent may retain such portion of any remaining funds as Agent determines is necessary or appropriate as Collateral for future fees, expenses and other Obligations of Agent related to the Chapter 11 Cases through the termination thereof. The remainder of such funds, if any, shall be applied to the DIP Term Loans in accordance with Section 2.4(e).

(e) **Application of Payments to DIP Term Loans**. Any amounts applied to the DIP Term Loans hereunder shall be applied thereto in accordance with the post-Application Event (as defined in the Prepetition Facility Credit Agreement) waterfall set forth in Section 2.4(b)(iii) of the Prepetition Facility Credit Agreement (giving effect to the priority of the applicable Prepetition Facility Obligations that were rolled up into such DIP Term Loans).

(f) **Conflict with DIP Orders**. In the event of any direct conflict between this Section 2.4 and the DIP Orders, the DIP Orders shall control.

2.5 **Promise to Pay; Promissory Notes**.

(a) Borrowers agree to pay the Lender Group Expenses on the earlier of (i) the first day of the month following the date on which the applicable Lender Group Expenses were first incurred, or (ii) the date on which demand therefor is made by Agent. Borrowers promise to pay all of the Obligations, including principal, interest, premiums, if any, fees, costs, and expenses, including Lender Group Expenses and Lender Professional fees and expenses, in full on the Maturity Date or, if earlier, on the date on which the Obligations (other than the Bank Product Obligations) become due and payable pursuant to the terms of this Agreement or the DIP Orders. Borrowers agree that their obligations contained in the first sentence of this Section 2.5(a) shall survive payment or satisfaction in full of all other Obligations.

(b) Any Lender may request that any portion of its Commitments or the Loans made or held by it be evidenced by one or more promissory notes. In such event, Borrowers shall execute and deliver to such Lender the requested promissory notes payable to the order of such Lender in a form furnished by Agent and having terms consistent with this Agreement and reasonably satisfactory to Borrowers.

2.6 **Interest Rates: Rates, Payments, and Calculations**.

(a) **Interest Rates**. Except as provided in Section 2.6(c) and Section 2.12, all Loans and all Obligations that have been charged to the Loan Account pursuant to the terms hereof shall bear interest as follows:

(i) if the relevant Loan or Obligation is a Daily Simple SOFR Loan, at a per annum rate equal to Adjusted Daily Simple SOFR plus the Applicable Margin; and

(ii) otherwise, at a per annum rate equal to the Base Rate plus the Applicable Margin.

(b) **[Reserved]**.

(c) **Default Rate**. Automatically upon the occurrence and during the continuation of any Event of Default, (i) all Loans shall bear interest at a per annum rate equal to two percentage points above the per annum rate otherwise applicable thereto and (ii) all other Obligations, including overdue interest, fees, costs and expenses, shall bear interest at a per annum rate equal to the rate then applicable to Base Rate Loans plus two percentage points.

(d) **Payment**. Except to the extent provided to the contrary in Section 2.10, all interest and all other fees payable hereunder or under any of the other Loan Documents shall be due and payable, in arrears, on each Interest Payment Date applicable thereto; provided that, if an Event of Default has occurred and is continuing, such amounts shall be due and payable, in arrears, on the first day of each month. All costs and expenses payable hereunder or under any of the other Loan Documents, and all other Lender Group Expenses, shall be due and payable on the earlier of (i) the first day of the month following the date on which the applicable costs, expenses, or Lender Group Expenses were first incurred, or (ii) the date on which demand therefor is made by Agent **(it being acknowledged and agreed that any charging of such costs, expenses or Lender Group Expenses to the Loan Account pursuant to the provisions of the following sentence shall be deemed to constitute a demand for payment thereof for the purposes of this sentence)**. Borrowers hereby authorize Agent, from time to time without prior notice to Borrowers, to charge to the Loan Account (A) on each Interest Payment Date, all interest accrued during the prior month on the Loans hereunder, (B) as and when incurred or accrued, all fees and costs provided for in Section 2.10(a) or (e), (C) on the first day of each quarter (or, if an Event of Default has occurred and is continuing, during the prior month), the Unused Line Fee accrued during the prior quarter (or if an Event of Default has occurred and is continuing, month) pursuant to Section 2.10(b), (D) as and when due and payable, all other fees payable hereunder or under any of the other Loan Documents, (E) as and when incurred or accrued, all other Lender Group Expenses and Lender Professional fees and expenses and (F) as and when due and payable all other payment obligations payable under any Loan Document or any Bank Product Agreement (including any amounts due and payable to the Bank Product Providers in respect of Bank Products). All amounts charged to the Loan Account shall constitute Obligations hereunder and, to the extent advanced, shall constitute DIP Revolving Loans hereunder.

(e) **Computation**. All interest and fees shall be calculated on the basis of a 360 day year and actual days elapsed, other than for Base Rate Loans which shall be calculated on the basis of a 365 or 366 day year, as applicable, and actual days elapsed in the period during which the interest or fees accrue. In the event the Base Rate is changed from time to time hereafter, the rates of interest hereunder based upon the Base Rate automatically and immediately shall be increased or decreased by an amount equal to such change in the Base Rate.

(f) **Intent to Limit Charges to Maximum Lawful Rate**. In no event shall the interest rate or rates payable under this Agreement, plus any other amounts paid in connection herewith, exceed the highest rate permissible under any law that a court of competent jurisdiction shall, in a final determination, deem applicable. Borrowers and the Lender Group, in executing and delivering this Agreement, intend legally to agree upon the rate or rates of interest and manner of payment stated within it; provided, that anything contained herein to the contrary notwithstanding, if such rate or rates of interest or manner of payment exceeds the maximum allowable under applicable law, then, *ipso facto*, as of the date of this Agreement, Borrowers are and shall be liable only for the payment of such maximum amount as is allowed by law, and payment received from Borrowers in excess of such legal maximum, whenever received, shall be applied to reduce the principal balance of the Obligations to the extent of such excess.

(g) **Initial Benchmark Conforming Changes**. In connection with the use or administration of any Benchmark, Agent will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document. Agent will promptly notify Parent Borrower and the Lenders of the effectiveness of any Conforming Changes in connection with the use or administration of any Benchmark.

2.7 **Crediting Payments**.

The receipt of any payment item by Agent shall not be required to be considered a payment on account unless such payment item is a wire transfer of immediately available funds made to Agent's Account or unless and until such payment item is honored when presented for payment. Should any payment item not be honored when presented for payment, then Borrowers shall be deemed not to have made such payment. Anything to the contrary contained herein notwithstanding, any payment item shall be deemed received by Agent only if it is received into Agent's Account on a Business Day on or before 1:30 p.m. If any payment item is received into Agent's Account on a non-Business Day or after 1:30 p.m. on a Business Day, unless Agent, in its sole discretion, elects to credit it on the date received, it shall be deemed to have been received by Agent as of the opening of business on the immediately following Business Day.

2.8 **Designated Account**.

Agent is authorized to make DIP Revolving Loans under this Agreement based upon telephonic or other instructions received from anyone purporting to be an Authorized Person or, without instructions, if pursuant to Section 2.6(d). Borrowers agree to establish and maintain the Designated Account with the Designated Account Bank for the purpose of receiving the proceeds of the DIP Revolving Loans requested by Borrowers and made by Agent or the DIP Revolving Lenders hereunder. Unless otherwise agreed by Agent and Borrowers, any DIP Revolving Loan requested by Borrowers and made by Agent or the DIP Revolving Lenders hereunder shall be made to the Designated Account.

2.9 **Maintenance of Loan Account; Statements of Obligations**.

Agent shall maintain an account on its books in the name of Borrowers, the "Loan Account," on which Borrowers will be charged with all DIP Revolving Loans made by Agent or the DIP Revolving Lenders to Borrowers or for Borrowers' account, the DIP Term Loans, and all other payment Obligations hereunder or under the other Loan Documents, including accrued interest, fees and expenses, Lender Group Expenses and Lender Professional fees and expenses. In accordance with Section 2.7, the Loan Account will be credited with all payments received by Agent from Borrowers or for Borrowers' account. Agent shall make available to Borrowers monthly statements regarding the Loan Account, including the principal amount of the DIP Revolving Loans and DIP Term Loans, interest accrued hereunder, fees accrued or

charged hereunder or under the other Loan Documents, and a summary itemization of all charges and expenses constituting Lender Group Expenses or Lender Professional fees and expenses accrued hereunder or under the other Loan Documents, and each such statement, absent manifest error, shall be conclusively presumed to be correct and accurate and constitute an account stated between Borrowers and the Lender Group unless, within 30 days after Agent first makes such a statement available to Borrowers, Borrowers shall deliver to Agent written objection thereto describing the error or errors contained in such statement.

2.10 **Fees**.

(a) **Agent Fees**. Borrowers shall pay to Agent, for the account of Agent, as and when due and payable under the terms of the Fee Letter, the fees set forth in the Fee Letter.

(b) **Unused Line Fee**. Borrowers shall pay to Agent, for the ratable account of the DIP Revolving Lenders, on the first day of each calendar quarter and on the Maturity Date (calculated for so much as the then existing calendar quarter as has elapsed) in arrears the accrued and unpaid Unused Line Fee, which Unused Line Fee shall accrue from and including the Closing Date until, but not including, the Maturity Date; provided, that if an Event of Default has occurred and is continuing, such Unused Line Fee shall be due and payable, in arrears, on the first day of each month, prior to the date on which the Obligations are paid in full and on the date on which the Obligations are paid in full.

(c) **Closing Fee**. Borrowers shall pay to Agent, for the ratable account of the DIP Revolving Lenders, a closing fee equal to 3.00% of the DIP Revolving Committed Amount as in effect on the Closing Date, which fee shall be fully earned, due and payable in cash on the Closing Date. The Agent shall be permitted to charge such fee to the Loan Account on the Closing Date.

(d) **Exit Fee**. Borrowers shall pay to Agent, for the ratable account of the DIP Revolving Lenders, an exit fee equal to 2.00% of the DIP Revolving Committed Amount as in effect on the Closing Date, which fee shall be fully earned on the Closing Date and due and payable in cash on the earliest to occur of (i) the Maturity Date, (ii) the acceleration of the Obligations, (iii) the effective date of any Plan and (iv) the repayment in full of the Obligations following the termination of the Commitments. For the avoidance of doubt, and notwithstanding anything herein to the contrary, such fee shall be paid in full in cash prior to the making of any cash payments in respect of the DIP Term Loans.

(e) **Field Examination and Other Fees**. Subject to any limitations set forth in Section 5.7(c), Borrowers shall pay to Agent field examination, appraisal, and valuation fees and charges, as and when incurred or chargeable, including the fees, charges or expenses paid or incurred by Agent if it elects to employ the services of one or more third Persons to examine, appraise or value the Collateral, or any portion thereof.

2.11 **Existing Letters of Credit**.

(a) **No New Letter of Credit Facility**. No Letters of Credit shall be issued, renewed, extended, amended or increased under this Agreement, and no Lender shall have any obligation under this Agreement to issue or participate in any Letter of Credit.

(b) **Existing Letters of Credit**. Subject to the terms of this Agreement, the Approved Budget and the DIP Orders, DIP Revolving Loans may be used to cash collateralize Existing Letters of Credit. Any DIP Revolving Loan made for such purpose shall constitute a DIP Revolving Loan and an Obligation for all purposes under this Agreement.

(c) **Cash Collateralization**. Any proceeds of DIP Revolving Loans used to cash collateralize Existing Letters of Credit shall be deposited directly into the Existing LC Cash Collateral Account or otherwise delivered to the applicable issuer of such Existing Letters of Credit pursuant to arrangements acceptable to Agent. All cash collateral posted in respect of Existing Letters of Credit shall constitute Collateral and shall be subject to the Liens and superpriority claims granted under the Loan Documents and the DIP Orders.

(d) **Release and Application**. Any cash collateral released with respect to Existing Letters of Credit shall be remitted to Agent and applied in accordance with Section 2.4. For the avoidance of doubt, no such released cash collateral shall be applied to the DIP Term Loans unless and until the DIP Revolving Commitments have been terminated, all DIP Revolving Loans and related Obligations have been paid in full in cash, and Agent has retained such portion of remaining funds as Agent determines is necessary or appropriate as collateral for future fees, expenses and other Obligations of Agent related to the Chapter 11 Cases.

(e) **DIP Orders Control**. In the event of any conflict between this Section 2.11 and the DIP Orders, the DIP Orders shall control.

2.12 **SOFR Provisions**.

(a) **Daily Simple SOFR Loans**. Subject to the terms and conditions of this Agreement, the Loans shall bear interest at a rate determined by reference to Adjusted Daily Simple SOFR. Borrowers shall not be permitted to request that any Loan bear interest by reference to a term SOFR rate or the Base Rate.

(b) **Increased Costs; Illegality**. Adjusted Daily Simple SOFR may be adjusted by Agent with respect to any Lender on a prospective basis to take into account any additional or increased costs (other than Taxes, which shall be governed by Section 16), in each case, due to changes in applicable law occurring subsequent to the making of, conversion to, or continuation of the applicable Daily Simple SOFR Loans, or pursuant to any Change in Law or change in the reserve requirements imposed by the Board of Governors, which additional or increased costs would increase the cost of funding or maintaining loans bearing interest at Adjusted Daily Simple SOFR. In any such event, the affected Lender shall give Borrowers and Agent notice of such determination and adjustment and Agent promptly shall transmit the notice to each other Lender and, upon its receipt of the notice from the affected Lender, Borrowers may, by notice to such affected Lender, (i) require such Lender to furnish to Borrowers a statement setting forth in reasonable detail the basis for adjusting Adjusted Daily Simple SOFR and the method for determining the amount of such adjustment, or (ii) repay the applicable Daily Simple SOFR Loans of such Lender.

Subject to Section 2.12(c), in the event that any change in market conditions or any Change in Law shall at any time after the date hereof, in the reasonable opinion of any Lender, make it unlawful or impractical for such Lender to fund or maintain Daily Simple SOFR Loans or to continue such funding or maintaining, or to determine or charge interest rates at Adjusted Daily Simple SOFR or SOFR, such Lender shall give notice of such changed circumstances to Agent and Borrowers and Agent promptly shall transmit the notice to each other Lender and, notwithstanding anything herein to the contrary, (A) any Daily Simple SOFR Loans of such Lender that are outstanding will be deemed to have been converted to Base Rate Loans immediately, and thereafter interest upon the Daily Simple SOFR Loans of such Lender shall accrue interest at the rate then applicable to Base Rate Loans, and (B) Borrowers shall not be entitled to request that any Loan bear interest by reference to Adjusted Daily Simple SOFR until such Lender determines that it would no longer be unlawful or impractical to do so.

(c) **Benchmark Replacement Setting**.

(i) **Benchmark Replacement**. Notwithstanding anything to the contrary herein or in any other Loan Document, upon the occurrence of a Benchmark Transition Event with respect to any Benchmark, Agent and Parent Borrower may amend this Agreement to replace such Benchmark with a Benchmark Replacement. Any such amendment with respect to a Benchmark Transition Event will become effective at 5:00 p.m. on the fifth Business Day after Agent has posted such proposed amendment to all affected Lenders and Parent Borrower so long as Agent has not received, by such time, written notice of objection to such amendment from Lenders comprising the Required Lenders. No replacement of a Benchmark with a Benchmark Replacement pursuant to this Section 2.12(c)(i) will occur prior to the applicable Benchmark Transition Start Date.

(ii) **Benchmark Replacement Conforming Changes**. In connection with the use, administration, adoption or implementation of a Benchmark Replacement, Agent will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document.

(iii) **Notices; Standards for Decisions and Determinations**. Agent will promptly notify Parent Borrower and the Lenders of (A) the implementation of any Benchmark Replacement and (B) the effectiveness of any Conforming Changes in connection with the use, administration, adoption or implementation of a Benchmark Replacement. Agent will notify Parent Borrower of the commencement of any Benchmark Unavailability Period. Any determination, decision or election that may be made by Agent or, if applicable, any Lender or group of Lenders pursuant to this Section 2.12(c), including any determination with respect to a rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Loan Document, except, in each case, as expressly required pursuant to this Section 2.12(c).

(iv) **Benchmark Unavailability Period**. Upon Parent Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period with respect to a given Benchmark, (A) Parent Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of any affected Daily Simple SOFR Loans to be made, converted or continued during any Benchmark Unavailability Period and, failing that, Parent Borrower will be deemed to have converted any such request into a request for a Borrowing of or conversion to Base Rate Loans and (B) any outstanding affected Daily Simple SOFR Loans will be deemed to have been converted to Base Rate Loans immediately.

(d) **No Requirement of Matched Funding**. Anything to the contrary contained herein notwithstanding, neither Agent, nor any Lender, nor any of their Participants, is required actually to match fund any Obligation as to which interest accrues at Adjusted Daily Simple SOFR, SOFR or any other Benchmark.

2.13 **Capital Requirements**.

(a) If, after the date hereof, any Lender determines that (i) any Change in Law regarding capital, liquidity or reserve requirements for banks or bank holding companies, or (ii) compliance by such Lender, or its parent bank holding company, with any guideline, request or directive of any Governmental Authority regarding capital adequacy or liquidity requirements (whether or not having the force of law), has the effect of reducing the return on such Lender's, or such holding company's, capital or liquidity as a consequence of such Lender's commitments, Loans or other obligations hereunder to a level below that which such Lender or such holding company could have achieved but for such Change in Law

or compliance (taking into consideration such Lender's or such holding company's then existing policies with respect to capital adequacy or liquidity requirements and assuming the full utilization of such entity's capital) by any amount deemed by such Lender to be material, then such Lender may notify Borrowers and Agent thereof. Following receipt of such notice, Borrowers agree to pay such Lender on demand the amount of such reduction of return of capital as and when such reduction is determined, payable within 30 days after presentation by such Lender of a statement in the amount and setting forth in reasonable detail such Lender's calculation thereof and the assumptions upon which such calculation was based (which statement shall be deemed true and correct absent manifest error). In determining such amount, such Lender may use any reasonable averaging and attribution methods. Failure or delay on the part of any Lender to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's right to demand such compensation; provided, that Borrowers shall not be required to compensate a Lender pursuant to this Section for any reductions in return incurred more than 180 days prior to the date that such Lender notifies Borrowers of such Change in Law giving rise to such reductions and of such Lender's intention to claim compensation therefor; provided further, that if such claim arises by reason of the Change in Law that is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof.

(b) If any Lender requests additional or increased costs referred to in Section 2.12(b) or amounts under Section 2.13(a) or sends a notice under Section 2.12(b) relative to changed circumstances (such Lender, an "Affected Lender"), then, at the request of Parent Borrower, such Affected Lender shall use reasonable efforts to promptly designate a different one of its lending offices or to assign its rights and obligations hereunder to another of its offices or branches, if (i) in the reasonable judgment of such Affected Lender, such designation or assignment would eliminate or reduce amounts payable pursuant to Section 2.12(b) or Section 2.13(a), as applicable, or would eliminate the illegality or impracticality of funding or maintaining Daily Simple SOFR Loans, and (ii) in the reasonable judgment of such Affected Lender, such designation or assignment would not subject it to any material unreimbursed cost or expense and would not otherwise be materially disadvantageous to it. Borrowers agree to pay all reasonable out-of-pocket costs and expenses incurred by such Affected Lender in connection with any such designation or assignment. If, after such reasonable efforts, such Affected Lender does not so designate a different one of its lending offices or assign its rights to another of its offices or branches so as to eliminate Borrowers' obligation to pay any future amounts to such Affected Lender pursuant to Section 2.12(b) or Section 2.13(a), as applicable, or to enable Borrowers to obtain Daily Simple SOFR Loans, then Borrowers (without prejudice to any amounts then due to such Affected Lender under Section 2.12(b) or Section 2.13(a), as applicable) may, unless prior to the effective date of any such assignment the Affected Lender withdraws its request for such additional amounts under Section 2.12(b) or Section 2.13(a), as applicable, or indicates that it is no longer unlawful or impractical to fund or maintain Daily Simple SOFR Loans, designate a substitute Lender or prospective Lender reasonably acceptable to Agent to purchase the Obligations owed to such Affected Lender and such Affected Lender's commitments hereunder (a "Replacement Lender"), and if such Replacement Lender agrees to such purchase, such Affected Lender shall assign to the Replacement Lender its Obligations and commitments, and upon such purchase by the Replacement Lender, such Replacement Lender shall be deemed to be a "Lender" for purposes of this Agreement and such Affected Lender shall cease to be a "Lender" for purposes of this Agreement.

(c) Notwithstanding anything herein to the contrary, the protection of Sections 2.12(b) and 2.13 shall be available to each Lender, as applicable, regardless of any possible contention of the invalidity or inapplicability of the law, rule, regulation, judicial ruling, judgment, guideline, treaty or other change or condition which shall have occurred or been imposed, so long as it shall be customary for lenders affected thereby to comply therewith. Notwithstanding any other provision herein, no Lender shall demand compensation pursuant to this Section 2.13 if it shall not at the time be the general policy or practice of such Lender to demand such compensation in similar circumstances under comparable provisions of other credit agreements, if any.

2.14 **[Reserved]**.

2.15 **Joint and Several Liability of Borrowers**.

(a) Each Borrower is accepting joint and several liability hereunder and under the other Loan Documents in consideration of the financial accommodations to be provided by the Lender Group under this Agreement, for the mutual benefit, directly and indirectly, of each Borrower and in consideration of the undertakings of the other Borrowers to accept joint and several liability for the Obligations.

(b) Each Borrower, jointly and severally, hereby irrevocably and unconditionally accepts, not merely as a surety but also as a co-debtor, joint and several liability with the other Borrowers, with respect to the payment and performance of all of the Obligations (including any Obligations arising under this Section 2.15), it being the intention of the parties hereto that all the Obligations shall be the joint and several obligations of each Borrower without preferences or distinction among them. Accordingly, each Borrower hereby waives any and all suretyship defenses that would otherwise be available to such Borrower under applicable law.

(c) If and to the extent that any Borrower shall fail to make any payment with respect to any of the Obligations as and when due, whether upon maturity, acceleration, or otherwise, or to perform any of the Obligations in accordance with the terms thereof, then in each such event the other Borrowers will make such payment with respect to, or perform, such Obligations until such time as all of the Obligations are paid in full, and without the need for demand, protest, or any other notice or formality.

(d) The Obligations of each Borrower under the provisions of this Section 2.15 constitute the absolute and unconditional, full recourse Obligations of each Borrower enforceable against each Borrower to the full extent of its properties and assets, irrespective of the validity, regularity or enforceability of the provisions of this Agreement (other than this Section 2.15(d)) or any other circumstances whatsoever.

(e) Without limiting the generality of the foregoing and except as otherwise expressly provided in this Agreement, each Borrower hereby waives presentments, demands for performance, protests and notices, including notices of acceptance of its joint and several liability, notice of any Loans pursuant to this Agreement, notice of the occurrence of any Default, Event of Default, notices of nonperformance, notices of protest, notices of dishonor, notices of acceptance of this Agreement, notices of the existence, creation, or incurring of new or additional Obligations or other financial accommodations or of any demand for any payment under this Agreement, notice of any action at any time taken or omitted by Agent or Lenders under or in respect of any of the Obligations, any right to proceed against any other Borrower or any other Person, to proceed against or exhaust any security held from any other Borrower or any other Person, to protect, secure, perfect, or insure any security interest or Lien on any property subject thereto or exhaust any right to take any action against any other Borrower, any other Person, or any collateral, to pursue any other remedy in any member of the Lender Group's or any Bank Product Provider's power whatsoever, any requirement of diligence or to mitigate damages and, generally, to the extent permitted by applicable law, all demands, notices and other formalities of every kind in connection with this Agreement (except as otherwise provided in this Agreement), any right to assert against any member of the Lender Group or any Bank Product Provider, any defense (legal or equitable), set-off, counterclaim, or claim which each Borrower may now or at any time hereafter have against any other Borrower or any other party liable to any member of the Lender Group or any Bank Product Provider, any defense, set-off, counterclaim, or claim, of any kind or nature, arising directly or indirectly from the present or future lack of perfection, sufficiency, validity, or enforceability of the Obligations or any security therefor, and any right or defense arising by reason of any claim or defense based upon an election of remedies by any member of the Lender

Group or any Bank Product Provider including any defense based upon an impairment or elimination of such Borrower's rights of subrogation, reimbursement, contribution, or indemnity of such Borrower against any other Borrower. Without limiting the generality of the foregoing, each Borrower hereby assents to, and waives notice of, any extension or postponement of the time for the payment of any of the Obligations, the acceptance of any payment of any of the Obligations, the acceptance of any partial payment thereon, any waiver, consent or other action or acquiescence by Agent or Lenders at any time or times in respect of any default by any Borrower in the performance or satisfaction of any term, covenant, condition or provision of this Agreement, any and all other indulgences whatsoever by Agent or Lenders in respect of any of the Obligations, and the taking, addition, substitution or release, in whole or in part, at any time or times, of any security for any of the Obligations or the addition, substitution or release, in whole or in part, of any Borrower. Without limiting the generality of the foregoing, each Borrower assents to any other action or delay in acting or failure to act on the part of Agent or any Lender with respect to the failure by any Borrower to comply with any of its respective Obligations, including any failure strictly or diligently to assert any right or to pursue any remedy or to comply fully with applicable laws or regulations thereunder, which might, but for the provisions of this Section 2.15 afford grounds for terminating, discharging or relieving any Borrower, in whole or in part, from any of its Obligations under this Section 2.15, it being the intention of each Borrower that, so long as any of the Obligations hereunder remain unsatisfied, the Obligations of each Borrower under this Section 2.15 shall not be discharged except by performance and then only to the extent of such performance. The Obligations of each Borrower under this Section 2.15 shall not be diminished or rendered unenforceable by any winding up, reorganization, arrangement, liquidation, reconstruction or similar proceeding with respect to any other Borrower or Agent or any Lender. Each of the Borrowers waives, to the fullest extent permitted by law, the benefit of any statute of limitations affecting its liability hereunder or the enforcement hereof. Any payment by any Borrower or other circumstance which operates to toll any statute of limitations as to any Borrower shall operate to toll the statute of limitations as to each of the Borrowers. Each of the Borrowers waives any defense based on or arising out of any defense of any Borrower or any other Person, other than payment of the Obligations to the extent of such payment, based on or arising out of the disability of any Borrower or any other Person, or the validity, legality, or unenforceability of the Obligations or any part thereof from any cause, or the cessation from any cause of the liability of any Borrower other than payment of the Obligations to the extent of such payment. Agent may, at the election of the Required Lenders, after the occurrence and during the continuance of an Event of Default, foreclose upon any Collateral held by Agent by one or more judicial or nonjudicial sales or other dispositions, whether or not every aspect of any such sale is commercially reasonable or otherwise fails to comply with applicable law or may exercise any other right or remedy Agent, any other member of the Lender Group, or any Bank Product Provider may have against any Borrower or any other Person, or any security, in each case, without affecting or impairing in any way the liability of any of the Borrowers hereunder except to the extent the Obligations have been paid.

(f) Each Borrower represents and warrants to Agent and Lenders that such Borrower is currently informed of the financial condition of Borrowers and of all other circumstances which a diligent inquiry would reveal and which bear upon the risk of nonpayment of the Obligations. Each Borrower further represents and warrants to Agent and Lenders that such Borrower has read and understands the terms and conditions of the Loan Documents. Each Borrower hereby covenants that such Borrower will continue to keep informed of Borrowers' financial condition and of all other circumstances which bear upon the risk of nonpayment or nonperformance of the Obligations.

(g) The provisions of this Section 2.15 are made for the benefit of Agent, each member of the Lender Group, each Bank Product Provider, and their respective successors and assigns, and may be enforced by it or them from time to time against any or all Borrowers as often as occasion therefor may arise and without requirement on the part of Agent, any member of the Lender Group, any Bank Product Provider, or any of their successors or assigns first to marshal any of its or their claims or to exercise any of its or their rights against any Borrower or to exhaust any remedies available to it or them against any

Borrower or to resort to any other source or means of obtaining payment of any of the Obligations hereunder or to elect any other remedy. The provisions of this Section 2.15 shall remain in effect until all of the Obligations shall have been paid in full or otherwise fully satisfied. If at any time, any payment, or any part thereof, made in respect of any of the Obligations, is rescinded or must otherwise be restored or returned by Agent or any Lender upon the insolvency, bankruptcy or reorganization of any Borrower, or otherwise, the provisions of this Section 2.15 will forthwith be reinstated in effect, as though such payment had not been made.

(h) Each Borrower hereby agrees that it will not enforce any of its rights that arise from the existence, payment, performance or enforcement of the provisions of this Section 2.15, including rights of subrogation, reimbursement, exoneration, contribution or indemnification and any right to participate in any claim or remedy of Agent or any other member of the Lender Group or any Bank Product Provider against any Borrower, whether or not such claim, remedy or right arises in equity or under contract, statute or common law, including the right to take or receive from any Borrower, directly or indirectly, in cash or other property or by set-off or in any other manner, payment or security solely on account of such claim, remedy or right, unless and until such time as all of the Obligations have been paid in full in cash. Any claim which any Borrower may have against any other Borrower with respect to any payments to Agent or any member of the Lender Group hereunder or under any of the Bank Product Agreements are hereby expressly made subordinate and junior in right of payment, without limitation as to any increases in the Obligations arising hereunder or thereunder, to the prior payment in full in cash of the Obligations and, in the event of any insolvency, bankruptcy, receivership, liquidation, reorganization or other similar proceeding under the laws of any jurisdiction relating to any Borrower, its debts or its assets, whether voluntary or involuntary, all such Obligations shall be paid in full in cash before any payment or distribution of any character, whether in cash, securities or other property, shall be made to any other Borrower therefor. If any amount shall be paid to any Borrower in violation of the immediately preceding sentence, such amount shall be held in trust for the benefit of Agent, for the benefit of the Lender Group and the Bank Product Providers, and shall forthwith be paid to Agent to be credited and applied to the Obligations and all other amounts payable under this Agreement, whether matured or unmatured, in accordance with the terms of this Agreement, or to be held as Collateral for any Obligations or other amounts payable under this Agreement thereafter arising. Notwithstanding anything to the contrary contained in this Agreement, no Borrower may exercise any rights of subrogation, contribution, indemnity, reimbursement or other similar rights against, and may not proceed or seek recourse against or with respect to any property or asset of, any other Borrower (the "Foreclosed Borrower"), including after payment in full of the Obligations, if all or any portion of the Obligations have been satisfied in connection with an exercise of remedies in respect of the Equity Interests of such Foreclosed Borrower whether pursuant to this Agreement or otherwise.

(i) Each of the Borrowers hereby acknowledges and affirms that it understands that to the extent the Obligations are secured by Real Property located in California, the Borrowers shall be liable for the full amount of the liability hereunder notwithstanding the foreclosure on such Real Property by trustee sale or any other reason impairing such Borrower's right to proceed against any other Loan Party. In accordance with Section 2856 of the California Civil Code or any similar laws of any other applicable jurisdiction, each of the Borrowers hereby waives until such time as the Obligations have been paid in full:

(i) all rights of subrogation, reimbursement, indemnification, and contribution and any other rights and defenses that are or may become available to the Borrowers by reason of Sections 2787 to 2855, inclusive, 2899, and 3433 of the California Civil Code or any similar laws of any other applicable jurisdiction;

(ii) all rights and defenses that the Borrowers may have because the Obligations are secured by Real Property located in California, meaning, among other things, that: (A) Agent, the other members of the Lender Group and the Bank Product Providers may collect from the

Borrowers without first foreclosing on any real or personal property collateral pledged by any Loan Party, and (B) if Agent, on behalf of the Lender Group, forecloses on any Real Property Collateral pledged by any Loan Party, (1) the amount of the Obligations may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price, and (2) the Lender Group may collect from the Loan Parties even if, by foreclosing on the Real Property Collateral, Agent or the other members of the Lender Group have destroyed or impaired any right the Borrowers may have to collect from any other Loan Party, it being understood that this is an unconditional and irrevocable waiver of any rights and defenses the Borrowers may have because the Obligations are secured by Real Property (including any rights or defenses based upon Sections 580a, 580d, or 726 of the California Code of Civil Procedure or any similar laws of any other applicable jurisdiction); and

(iii) all rights and defenses arising out of an election of remedies by Agent, the other members of the Lender Group and the Bank Product Providers, even though that election of remedies, such as a nonjudicial foreclosure with respect to security for the Obligations, has destroyed the Borrowers' rights of subrogation and reimbursement against any other Loan Party by the operation of Section 580d of the California Code of Civil Procedure or any similar laws of any other applicable jurisdiction or otherwise.

3. **CONDITIONS; TERM OF AGREEMENT**.

3.1 **Conditions Precedent to Closing Date, DIP Term Loan Borrowing and DIP Revolving Loan**. The effectiveness of this Agreement, the deemed making of the DIP Term Loan Borrowing and the obligation of each DIP Revolving Lender to make the DIP Revolving Loan provided for hereunder, if any, are subject to the satisfaction of, or the waiver of, immediately prior to or concurrently with the Closing Date, the following conditions precedent:

(a) **Executed Loan Documents**. Receipt by Agent of duly executed counterparts of this Agreement, any requested notes, the Guaranty and Security Agreement, and all other Loan Documents to be executed on the Closing Date, each in form and substance acceptable to the Agent and the Required Lenders.

(b) **Governing Documents**. Receipt by the Agent of the following:

(i) **Charter Documents**. Copies of the articles or certificates of incorporation or other formation or charter documents of each Loan Party, certified to be true and complete as of a recent date by the appropriate Governmental Authority of the state or other jurisdiction of its incorporation or organization and certified by a secretary or assistant secretary of such Loan Party to be true and correct as of the Closing Date;

(ii) **Bylaws**. A copy of the bylaws or operating agreement or similar agreement of each Loan Party certified by a secretary or assistant secretary of such Loan Party to be true and correct as of the Closing Date;

(iii) **Resolutions**. Copies of resolutions of the Board of Directors or similar managing body of each Loan Party approving and adopting the Loan Documents to which it is a party, the transactions contemplated therein and authorizing execution and delivery thereof, certified by a secretary or assistant secretary of such Loan Party to be true and correct and in force and effect as of the Closing Date;

(iv) **Good Standing**. Copies of certificates of good standing, existence or its equivalent with respect to each Loan Party certified as of a recent date by the appropriate Governmental Authorities of the state or other jurisdiction of incorporation or organization; and

(v) **Incumbency**. An incumbency certificate of each Loan Party certified by a secretary or assistant secretary to be true and correct as of the Closing Date.

(c) **[Reserved]**.

(d) **Personal Property Collateral**. The Agent shall have received:

(i) Searches of Code and other Lien filings in the jurisdiction of organization of each Loan Party, the jurisdiction in which the chief executive office of each Loan Party is located and, if requested by Agent, each other jurisdiction where any Collateral is located or where a filing under the Code could have been properly made by a creditor of a Loan Party, copies of the financing statements on file in such jurisdictions and evidence that no Liens exist other than Permitted Liens;

(ii) All instruments, documents and chattel paper in the possession of any of the Loan Parties, together with allonges or assignments as may be necessary or appropriate to perfect Agent's security interest in the Collateral to the extent required under the Guaranty and Security Agreement.

(e) **Priority of Liens**. Receipt by Agent of satisfactory evidence that, subject to the DIP Orders, (i) Agent, on behalf of the Lenders, holds perfected Liens on all Collateral; and (ii) none of the Collateral is subject to any other Liens other than Permitted Liens.

(f) **Evidence of Insurance**. To the extent not received by Agent prior to the Petition Date, receipt by Agent of (i) copies of insurance policies or certificates of insurance of the Loan Parties evidencing liability and casualty insurance meeting the requirements set forth in the Loan Documents, including naming Agent as lender loss payee and as an additional insured on behalf of the Lenders and copies of any credit insurance policies insuring foreign Accounts to be included in the Collateral and (ii) certificates of insurance, together with endorsements to such policies as are required by Section 5.10, in form and substance satisfactory to Agent in its Permitted Discretion.

(g) **Organizational Structure**. The capital and ownership structure of the Parent Borrower and its Subsidiaries shall be as described in Schedule 4.9.

(h) **Governmental, Shareholder and Third Party Consents**. Receipt by Agent of evidence satisfactory to it that (i) Parent Borrower and each of its Subsidiaries shall have received all governmental and third party approvals (including shareholder approvals, landlords' consents, and other consents under the laws of all other applicable jurisdictions) necessary or, in the reasonable opinion of Agent, advisable in connection with this Agreement or the transactions contemplated by the Loan Documents, which shall all be in full force and effect, and all applicable waiting periods shall have expired without any action being taken or threatened by any competent authority which would restrain, prevent or otherwise impose adverse conditions on this Agreement or the transactions contemplated by the Loan Documents; (ii) the Parent Borrower and each of its Subsidiaries shall have received all licenses, approvals or evidence of other actions required by any Governmental Authority in connection with the execution and delivery by the Loan Parties of the Loan Documents or with the consummation of the transactions contemplated thereby; and (iii) Parent Borrower and its Subsidiaries shall have received all amendments and consents necessary under any other documents, instruments, or agreements evidencing or executed and delivered in connection with any Permitted Indebtedness which will continue to be outstanding after the Closing Date, in each case, except to the extent not required pursuant to the Bankruptcy Code or the DIP Orders.

(i) **Litigation**. Except for the Chapter 11 Cases and matters disclosed on Schedule 4.10, there shall not exist any pending or threatened action, suit, investigation or proceeding against any

Loan Party or its assets that could reasonably be expected to (i) have a Material Adverse Effect or (ii) adversely affect any transaction contemplated by this Agreement, the DIP Orders or any other Loan Document.

(j) **Officer's Certificates**. Receipt by Agent of a certificate or certificates executed by the president, chief financial officer or chief administrative officer of the Parent Borrower as of the Closing Date stating that (i) all governmental, shareholder and third party consents and approvals, if any, with respect to the Loan Documents and the transactions contemplated thereby have been obtained, except to the extent not required pursuant to the Bankruptcy Code or the DIP Orders, (ii) no action, suit, investigation or proceeding is pending or threatened in any court or before any arbitrator or governmental instrumentality that purports to affect any Loan Party or any transaction contemplated by the Loan Documents, if such action, suit, investigation or proceeding could reasonably be expected to have a Material Adverse Effect, and (iii) immediately after giving effect to this Agreement, the other Loan Documents and all the transactions contemplated therein to occur on such date, (A) no Default or Event of Default exists and (B) all representations and warranties contained herein and in the other Loan Documents are true and correct in all material respects.

(k) **Fees and Expenses**. Payment in full by the Borrowers of all fees and expenses (x) owed by it to the Lenders and Agent, including payment to Agent of the fees set forth in the Fee Letter, and (y) of counsel to the Prepetition Facility Agent (to the extent such fees are not rolled-up and included as part of the Prepetition Facility Obligations) and counsel to any Lender (as defined in the Prepetition Facility Credit Agreement) to the extent an invoice therefor is received at least one (1) Business Day prior to the Closing Date, in each case of this clause (y), incurred in connection with the Prepetition Facility Credit Agreement on or prior to the Petition Date.

(l) **Sources and Uses; Payment Instructions**. Receipt by Agent of (i) a statement of sources and uses of funds covering all payments reasonably expected to be made by the Borrowers in connection with the transactions contemplated by the Loan Documents to be consummated on the Closing Date, including an itemized estimate of all fees, expenses and other closing costs and (ii) payment instructions with respect to each wire transfer to be made by Agent on behalf of the Lenders or the Parent Borrower or the Borrowers on the Closing Date setting forth the amount of such transfer, the purpose of such transfer, the name and number of the account to which such transfer is to be made, the name and ABA number of the bank or other financial institution where such account is located and the name and telephone number of an individual that can be contacted to confirm receipt of such transfer.

(m) [**Reserved**].

(n) **Accounts Payable**. The level and condition of the accounts payable of the Loan Parties shall be reasonably acceptable to the Agent.

(o) **Material Contracts**. The Agent shall have received copies of the Material Contracts.

(p) **USA Patriot Act; Etc**. The Agent shall have received, on or prior to the Closing Date or by such later date as Agent may agree in writing, all documentation and other information requested by Agent or any Lender or required by regulatory authorities under applicable "know your customer" and Anti-Money Laundering Laws, including, without limitation, (i) USA Patriot Act searches, OFAC/PEP searches and customary individual background checks for each Loan Party, and (ii) OFAC/PEP searches and customary individual background searches for each Loan Party's senior management and key principals, the results of which shall be satisfactory to Agent.

(q) **Beneficial Ownership Certification**. The Agent shall have received, on or prior to the Closing Date or by such later date as Agent may agree in writing, a Beneficial Ownership Certification in relation to each Loan Party that qualifies as a "legal entity customer" under the Beneficial Ownership Regulation, which Beneficial Ownership Certification shall be complete and accurate in all respects.

(r) **First Day Orders**. All First Day Orders filed by the Loan Parties on the Petition Date and related orders entered by the Bankruptcy Court in the Chapter 11 Cases (including any motions related to cash management or any critical vendor or supplier motions) shall be in form and substance reasonably satisfactory to the Agent.

(s) **Interim DIP/Cash Collateral Order**. The Bankruptcy Court shall have entered the Interim DIP/Cash Collateral Order no later than three (3) Business Days after the Petition Date (or such longer period agreed to by the Agent), which Interim DIP/Cash Collateral Order shall be in full force and effect and shall not have been reversed, vacated or stayed, and shall not have been amended, supplemented or otherwise modified without the prior written consent of the Agent (acting at the direction of the Required Lenders).

(t) **DIP Liens**. Agent, for the benefit of the Lender Group, shall have valid, binding, enforceable, non-avoidable, and automatically and fully perfected Liens on, and security interest in, the Collateral, in each case, as set forth in and having the priorities set forth in the DIP Orders.

(u) **Initial Budget**. Agent shall have received the Initial Budget, which shall be in form and substance acceptable to Agent and the Required Lenders.

(v) **Other**. Receipt by the Lenders of such other documents, instruments, agreements or information as reasonably requested by any Lender, including information regarding litigation, tax, accounting, labor, insurance, pension liabilities (actual or contingent), Real Property leases, Material Contracts, debt agreements, property ownership and contingent liabilities of the Loan Parties, in each case with results satisfactory to Agent in its Permitted Discretion.

3.2 **Conditions Precedent to all Loans**. The obligation of the Lender Group, or any member thereof, to make any DIP Revolving Loan hereunder after the Closing Date shall be subject to the following conditions precedent:

(a) the applicable DIP Order authorizing such DIP Revolving Loan shall be in full force and effect and shall not have been reversed, vacated or stayed, and shall not have been amended, supplemented or otherwise modified without the prior written consent of the Agent (acting at the direction of the Required Lenders); provided that, from and after the date that is thirty (30) days after the Petition Date, the Final DIP/Cash Collateral Order shall have been entered and shall be in full force and effect and shall not have been reversed, vacated or stayed, and shall not have been amended, supplemented or otherwise modified without the prior written consent of the Agent (acting at the direction of the Required Lenders);

(b) all First Day Orders and related orders entered by the Bankruptcy Court shall be in form and substance reasonably acceptable to the Agent;

(c) subject to the Carve-Out and Permitted Liens, Agent, for the benefit of the Lender Group, shall have valid, binding, enforceable, non-avoidable, and automatically and fully perfected Liens on, and security interest in, the Collateral, in each case, as set forth in and having the priorities set forth in the applicable DIP Order;

(d) the representations and warranties of each Loan Party or its Subsidiaries contained in this Agreement or in the other Loan Documents shall be true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof) on and as of the date of such DIP Revolving Loan, as though made on and as of such date (except to the extent that such representations and warranties relate solely to an earlier date, in which case such representations and warranties shall be true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof) as of such earlier date);

(e) no Default or Event of Default shall have occurred and be continuing on the date of such DIP Revolving Loan, nor shall either result from the making thereof;

(f) no Material Adverse Effect shall have occurred and be continuing; and

(g) with respect to any DIP Revolving Borrowing, (i) after giving effect to such DIP Revolving Borrowing, (x) the DIP Revolving Exposure shall not exceed the DIP Revolving Committed Amount, and (y) the aggregate amount of all DIP Revolving Borrowings in the calendar week in which such requested DIP Revolving Borrowing is expected to be funded shall not exceed 110% of the Budgeted Two-Week Amount, and (ii) such DIP Revolving Borrowing shall be consistent in all material respects with the Approved Budget (subject to Permitted Variances) and the DIP Orders.

3.3 **Term**. The DIP Revolving Commitments shall terminate automatically on the Commitment Termination Date. The DIP Revolving Loans and all Obligations related to the DIP Revolving Facility, including all fees, expenses and other amounts owing to Agent, shall be due and payable in full in cash on the Commitment Termination Date. The DIP Term Loans and all Obligations related thereto shall be due and payable in full in cash (or as otherwise agreed by the Agent) on the Maturity Date or, if earlier, on the date on which such Obligations become due and payable pursuant to this Agreement, the DIP Orders or the Plan; provided that, for the avoidance of doubt, no DIP Term Loans shall be paid or prepaid except in accordance with Section 2.4.

3.4 **Effect of Maturity**. On the Maturity Date, all commitments of the Lender Group to provide additional credit hereunder shall automatically be terminated and all of the Obligations (other than Hedge Obligations) immediately shall become due and payable without notice or demand and Borrowers shall be required to repay all of the Obligations (other than Hedge Obligations) in full. No termination of the obligations of the Lender Group (other than payment in full of the Obligations and termination of the Commitments) shall relieve or discharge any Loan Party of its duties, obligations, or covenants hereunder or under any other Loan Document and Agent's Liens in the Collateral shall continue to secure the Obligations and shall remain in effect until all Obligations have been paid in full. When all of the Obligations have been paid in full, Agent will, at Borrowers' sole expense, execute and deliver any termination statements, lien releases, discharges of security interests, and other similar discharge or release documents (and, if applicable, in recordable form) as are reasonably necessary to release, as of record, Agent's Liens and all notices of security interests and liens previously filed by Agent.

3.5 **Early Termination by Borrowers**. Borrowers may, upon at least one Business Day's prior written notice to Agent, terminate the DIP Revolving Commitments and repay all DIP Revolving Loans and all Obligations related to the DIP Revolving Facility in full in cash; provided that no such termination or repayment shall affect the cash sweep, blocked account, collateral retention or application provisions set forth in Section 2.4. Borrowers may not voluntarily prepay the DIP Term Loans unless and until the DIP Revolving Commitments have been terminated, all DIP Revolving Loans and all Obligations related to the DIP Revolving Facility, including all fees, expenses and other amounts owing to Agent, have been paid in full in cash, and Agent has established any reserve contemplated by Section 2.4(d).

3.6 **Post-Closing Matters**. The Loan Parties shall deliver to Agent each item listed on Schedule 3.6 on or before the date specified for such item therein, in each case in form and substance satisfactory to Agent. Failure to comply with this Section 3.6 shall constitute an immediate Event of Default.

4. REPRESENTATIONS AND WARRANTIES.

In order to induce the Lender Group to enter into this Agreement, each Borrower and (by execution and delivery of the Guaranty and Security Agreement or of a joinder thereto and incorporation by reference therein) each Guarantor hereby represents and warrants to the Lenders as of the Closing Date and on the date of each DIP Revolving Loan hereunder, as follows:

4.1 Organization and Qualification; Subsidiaries.

(a) Each Loan Party is a debtor and debtor-in-possession in the Chapter 11 Cases. Such Loan Party and each of its Subsidiaries (i) is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, subject to the entry of the DIP Orders and any restrictions arising on account of such Loan Party's status as a "debtor" under the Bankruptcy Code, (ii) subject to the entry of the DIP Orders, has the power and authority to own its properties and assets and to transact the businesses in which it is presently, or proposes to be, engaged, and (iii) is duly qualified and is authorized to do business and is in good standing in every jurisdiction in which the failure to be so qualified could reasonably be expected to have a Material Adverse Effect. Schedule 4.1 (as such Schedule may be updated from time to time to reflect changes resulting from transactions permitted under this Agreement) contains a true, correct and complete list of all jurisdictions in which such Loan Party and its Subsidiaries are qualified to do business as a foreign corporation or foreign limited liability company as of the Closing Date.

(b) The exact legal name of such Borrower is set forth on the signature pages of this Agreement and the exact legal name of all of the other Loan Parties is listed on Schedule 4.1 (as such Schedule may be updated from time to time to reflect changes resulting from transactions permitted under this Agreement). The IRS taxpayer or other applicable taxpayer identification number and the organizational identification number issued by the jurisdiction of formation of each Loan Party are listed next to such Loan Party's name on Schedule 4.1.

4.2 **Budget; Variance Report**. The Initial Budget, each Approved Budget and each Budget are based upon good faith estimates and assumptions believed by management of the Loan Parties to be reasonable at the time made, in light of the circumstances under which they were made, it being recognized by the Agent and the Lenders that such financial information as it relates to future events is not to be viewed as fact, such financial information as it relates to future events is subject to uncertainties and contingencies, many of which are beyond the Loan Parties' control, no assurance can be given that such financial information as it relates to future events will be realized and actual results during the period or periods covered by such financial information may differ from the projected results set forth therein and such differences may be material. From and after the delivery of any Variance Report in accordance with this Agreement, such Variance Report shall be true, complete and correct in all material respects and fairly represent in all material respects the results of operations of the Loan Parties and their respective Subsidiaries for the period covered thereby and in the detail required to be covered thereby.

4.3 Liens; Inventory.

(a) There are no Liens in favor of third parties with respect to any of the Collateral, including with respect to the Inventory, wherever located, other than Permitted Liens. To the best of such Loan Party's knowledge, no lessor, warehouseman, filler, processor or packer of such Loan Party has been

granted any Lien with respect to the Inventory maintained by such Loan Party at the property of any such lessor, warehousemen, filler, processor or packer, except for Permitted Liens. Upon the entry of the DIP Orders and, as applicable, the proper filing of financing statements and the proper recordation of other applicable documents with the appropriate filing or recordation offices in each of the necessary jurisdictions, the security interests granted pursuant to the Loan Documents and the DIP Orders constitute and shall at all times constitute valid and enforceable Liens on the Collateral, having the priorities set forth in the DIP Orders. The Guaranty and Security Agreement and the Mortgages create a valid security interest in the Collateral of such Borrower, to the extent a security interest therein can be created under the Code. Except to the extent a security interest in the Collateral cannot be perfected by the filing of a financing statement under the UCC or is perfected pursuant to the DIP Orders, all filings and other actions necessary or desirable to perfect and protect such security interest have been duly taken or will have been taken upon the filing of financing statements in the jurisdictions set forth in Schedule 4.3. Upon the entry of the DIP Orders and, as applicable, the filing of such financing statements, the Agent shall have a perfected security interest in the Collateral of such Loan Party, having the priorities set forth in the DIP Orders and subject only to Permitted Liens.

(b) The Loan Parties are, or will be at the time additional Collateral is acquired by them, the absolute owners of the Collateral with full right to pledge, sell, consign, transfer and create a Lien therein, free and clear of any and all Liens in favor of third parties, except Permitted Liens. The Loan Parties will at their expense warrant, until all of the Credit and Collateral Termination Events have occurred, and, at the Agent's request, defend the Collateral from any and all Liens (other than Permitted Liens) of any third party. The Loan Parties will not grant, create or permit to exist, any Lien upon the Collateral, or any proceeds thereof, in favor of any third party (other than Permitted Liens).

4.4 **Due Authorization; No Conflict**. The execution and delivery by such Borrower of this Agreement and by the Loan Parties of each of the other Loan Documents executed and delivered in connection herewith and the performance of the obligations of such Loan Party hereunder and thereunder, as applicable, and the consummation by such Loan Party of the transactions contemplated hereby and thereby: (a) are within the corporate or other organizational, as the case may be, powers of such Loan Party; (b) are duly authorized by the board of directors or, if a limited liability company, the board of managers, managers, or members of such Loan Party; (c) are not in contravention of the terms of the Governing Documents of such Loan Party or any Material Contract; (d) do not require the consent, registration or approval of any Governmental Authority or any other Person, except such as have been duly obtained, made or given and are in full force and effect, except for consents of Persons (other than a Governmental Authority) that are not material, and except to the extent not required pursuant to the Bankruptcy Code or the DIP Orders; (e) subject to the entry of the DIP Orders, do not contravene in any material respect any statute, law, ordinance regulation, rule, order or other governmental restriction applicable to or binding upon such Loan Party; and (f) will not, except as contemplated herein or in the DIP Orders for the benefit of the Agent on behalf of the Lenders, result in the imposition of any Liens upon any property of such Loan Party under any existing Material Contract.

4.5 **Enforceability**. Upon the entry by the Bankruptcy Court of the applicable DIP Order, this Agreement and all of the other Loan Documents, as applicable, are the legal, valid and binding obligations of such Loan Party, and with respect to those Loan Documents executed and delivered by any other Subsidiary, of each such other Subsidiary, and are enforceable against such Loan Party and such other Subsidiaries, as the case may be, in accordance with their terms and the applicable DIP Order.

4.6 **Financial Data; Material Adverse Effect**.

(a) Parent Borrower has furnished to the Agent and the Lenders all Financials required to be delivered prior to the Closing Date. The Financials are and the financial statements to be furnished to

the Lenders in accordance with Section 5.1 will be in accordance with the books and records of the Parent Borrower, are accurate and fairly present the financial condition of each of the Loan Parties at the dates thereof and the results of operations for the periods indicated (subject, in the case of unaudited financial statements, to the absence of footnotes and normal year-end adjustments), and such financial statements have been and will be prepared in conformity with GAAP consistently applied throughout the periods involved.

(b) Since the Petition Date, there have been no changes in the condition, financial or otherwise, of any of the Loan Parties, except (i) as contemplated herein, under the DIP Orders or in the Chapter 11 Cases and (ii) for changes in the ordinary course of business, none of which individually or in the aggregate constitutes a Material Adverse Effect.

4.7 **Locations of Offices, Records, Inventory and Equipment**. The Loan Parties' jurisdictions of organization, registered offices, principal places of business and chief executive offices are set forth in Schedule 4.7, and the books and records of the Loan Parties and all chattel paper and all records of accounts are located at the principal places of business and chief executive offices of the Loan Parties. There is no jurisdiction in which any Loan Party has any Collateral (except for vehicles, Inventory held for shipment by third Persons, Inventory in transit, Inventory held for processing by third Persons, or immaterial quantities of assets, equipment or Inventory) other than those jurisdictions listed on Schedule 4.7. Schedule 4.7 is a true, correct and complete list of (i) the legal names and addresses of each warehouseman, filler, processor and packer at which Inventory is stored, (ii) the address of the registered offices and chief executive offices of the Loan Parties and each of their Subsidiaries, (iii) the address of all offices where records and books of account of the Loan Parties and each of their Subsidiaries are kept and (iv) the address of all locations where equipment and Inventory of the Loan Parties and their Subsidiaries are kept. None of the receipts received by any of the Loan Parties from any warehouseman, filler, processor or packer states that the goods covered thereby are to be delivered to bearer or to the order of a named person or to a named person and such named person's assigns.

4.8 **Fictitious Business Names**. No Loan Party has used any corporate, organizational or fictitious name during the five years preceding the date hereof, other than the name shown on its or such Loan Party's articles or certificate of incorporation, organization, or formation and as set forth on Schedule 4.8.

4.9 **Subsidiaries**. The only direct or indirect Subsidiaries of the Parent Borrower are those listed on Schedule 4.9. The Persons identified on Schedule 4.9 are the record and beneficial owner of all of the shares of Capital Stock of each of the Persons listed on Schedule 4.9 as being owned thereby, there are no proxies, irrevocable or otherwise, with respect to such shares, and no equity securities of any of such Persons are or may become required to be issued by reason of any options, warrants, scrip, rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities or rights convertible into or exchangeable for, shares of any Capital Stock of any such Person, and there are no contracts, commitments, understandings or arrangements by which any such Person is or may become bound to issue additional shares of its Capital Stock or securities convertible into or exchangeable for such shares. All of such shares are owned by such Persons free and clear of any Liens other than Permitted Liens. The only Subsidiaries of Parent Borrower which are not Loan Parties are RNDC Canada.

4.10 **No Judgments or Litigation**. Except for the Chapter 11 Cases and as otherwise disclosed on Schedule 4.10, no judgments, orders, writs or decrees are outstanding against such Loan Parties or any of its Subsidiaries nor is there any contested claim, investigation, arbitration, or governmental proceeding by or against such Loan Party or any of its Subsidiaries except judgments, contested claims, investigations, arbitrations and governmental proceedings which could not reasonably be expected to have a Material Adverse Effect.

4.11 **No Defaults**. Except as otherwise disclosed to the Agent prior to the Petition Date, neither such Loan Party nor any of its Subsidiaries is in default under any term of any Material Contract, which default has had or could be reasonably expected to have a Material Adverse Effect. Such Loan Party knows of no dispute regarding any Material Contract which could reasonably be expected to have a Material Adverse Effect.

4.12 **No Employee Disputes**. There are no controversies pending or, to the best of such Loan Party's knowledge after diligent inquiry, threatened between such Loan Party or any of its Subsidiaries and any of their respective employees, other than those that could not, in the aggregate, reasonably be expected to have a Material Adverse Effect.

4.13 **Compliance with Law**. Neither such Loan Party nor any of its Subsidiaries has violated or failed to comply with any statute, law, ordinance, regulation, rule or order of any foreign, federal, state or local government, or any other Governmental Authority or any self-regulatory organization, or any judgment, decree or order of any court, applicable to its business or operations except where the aggregate of all such violations or failures to comply could not reasonably be expected to have a Material Adverse Effect. The conduct of the business of such Loan Party and each of its Subsidiaries is in conformity with all securities, commodities, energy, public utility, zoning, building code, health and OSHA and all other foreign, federal, state and local governmental and regulatory requirements and requirements of any self-regulatory organizations, except where such non-conformities could not reasonably be expected to have a Material Adverse Effect. Neither such Loan Party nor any of its Subsidiaries has received any notice to the effect that, or otherwise been advised that, it is not in compliance with, and neither such Loan Party nor any of its Subsidiaries has any reason to anticipate that any currently existing circumstances are likely to result in the violation of, any such statute, law, ordinance, regulation, rule, judgment, decree or order which failure or violation could reasonably be expected to have a Material Adverse Effect.

4.14 **Employee Benefits**.

(a) Except as set forth on Schedule 4.14, no Loan Party, none of their Subsidiaries, nor any of their ERISA Affiliates maintains or contributes to any Pension Plan or Multiemployer Plan.

(b) Each Loan Party and each of the ERISA Affiliates has complied in all material respects with ERISA, the IRC and all applicable laws regarding each Employee Benefit Plan.

(c) Each Employee Benefit Plan other than a multiemployer plan as defined in Section 3(37) of ERISA is, and has been, maintained in substantial compliance with ERISA, the IRC, all applicable laws and the terms of each such Employee Benefit Plan.

(d) Each Employee Benefit Plan that is intended to qualify under Section 401(a) of the IRC has received a favorable determination letter from the Internal Revenue Service or is entitled to rely on an opinion letter provided under a preapproved plan program. To the best knowledge of each Loan Party and the ERISA Affiliates after due inquiry, nothing has occurred which would prevent, or cause the loss of, such qualification.

(e) No liability to the PBGC (other than for the payment of current premiums which are not past due) by any Loan Party or ERISA Affiliate has been incurred or is expected by any Loan Party or ERISA Affiliate to be incurred with respect to any Pension Plan.

(f) No ERISA Event exists or has occurred in the past six (6) years which could reasonably be expected to result in a Material Adverse Effect.

(g) No Loan Party or ERISA Affiliate has provided any security under Section 436 of the IRC that has not been released.

4.15 **Compliance with Environmental Laws**. Except as disclosed on Schedule 4.15, (a) the operations of such Loan Party and each of its subsidiaries comply in all material respects with all applicable federal, state municipal or local environmental, health and safety statutes, regulations, directions, ordinances, criteria or guidelines and (b) none of the operations of such Loan Party or any of its Subsidiaries is the subject of any judicial or administrative proceeding alleging a material violation of any federal, state, municipal or local environmental, health or safety statute, regulation, direction, ordinance, criteria or guidelines. Except as disclosed on Schedule 4.15, none of the operations of such Loan Party or any of its Subsidiaries is the subject of any federal, state, municipal or local investigation evaluating whether such Loan Party or any of its Subsidiaries disposed any Hazardous Materials at any site that may require remedial action, or any federal, state, municipal or local investigation evaluating whether any remedial action is needed to respond to a release of any Hazardous Materials into the environment. Except as disclosed on Schedule 4.15, neither such Loan Party nor any of its Subsidiaries have filed any notice under any federal, state, territorial, municipal or local law indicating past or present treatment, storage or disposal of Hazardous Materials or reporting a spill or release of Hazardous Materials into the environment. Except as disclosed on Schedule 4.15, neither such Loan Party nor any of its Subsidiaries have any contingent liability of which such Loan Party has knowledge or reasonably should have knowledge in connection with any release of any Hazardous Materials into the environment, nor has such Loan Party or any of its Subsidiaries received any notice, letter or other indication of potential liability arising from the disposal of any Hazardous Materials into the environment.

4.16 **Use of Proceeds**. All proceeds of the DIP Revolving Loans will be used only in accordance with Section 6.13 and the DIP Orders. The DIP Term Loans represent only the roll-up of the Prepetition Facility Obligations and no proceeds of the DIP Term Loans shall be advanced to or made available for use by any Loan Party.

4.17 **Intellectual Property**. Such Loan Party and each of its Subsidiaries possesses adequate assets, licenses, patents, patent applications, industrial designs, industrial designs applications, copyrights, service marks, trademarks and tradenames to continue to conduct its business as heretofore conducted by it (collectively, the "Proprietary Rights"). The Proprietary Rights held by each Loan Party are all those necessary to conduct the businesses of such Loan Party and its Subsidiaries. Except as set forth on Schedule 4.17, such Loan Party and each of its Subsidiaries has no registered patents, industrial designs, copyrights, service marks or trademarks and has no pending registration applications with respect to any of the foregoing.

4.18 **Licenses and Permits**. Such Loan Party and each of its Subsidiaries have obtained and hold in full force and effect all material franchises, licenses, leases, permits, certificates, authorizations, qualifications, easements, rights of way and other rights and approvals that are necessary or appropriate for the operation of their businesses as presently conducted and as proposed to be conducted. Neither such Loan Party nor any of its Subsidiaries is in violation of the terms of any such franchise, license, lease, permit, certificate, authorization, qualification, easement, right of way, right or approval in any such case that could reasonably be expected to have a Material Adverse Effect.

4.19 **Title to Property**. Such Loan Party has (a) good, sufficient and legal title to or valid leasehold interests in all of its Real Property (all real property and the nature of such Loan Party's or any of its Subsidiary's interest therein is disclosed on Schedule 4.19, as it may be updated from time to time pursuant to Section 5.9) and (b) good and marketable title to all of its other property (including all real and other property in each case as reflected in the Financials delivered to the Agent hereunder), other than, with respect to properties described in clause (b) above, properties disposed of in the ordinary course of business

or in any manner otherwise permitted under this Agreement since the date of the most recent audited consolidated balance sheet of the Parent Borrower, and in each case subject to no Liens other than Permitted Liens. Such Loan Party and its Subsidiaries enjoy peaceful and undisturbed possession of all its Real Property and there is no pending or, to the best of their knowledge, threatened condemnation proceeding relating to any such Real Property. None of the Leases contains provisions that have or could reasonably be expected to have a Material Adverse Effect. No material default exists under any Lease. All of the improvements and other tangible assets owned, leased or used by such Loan Party or any of its Subsidiaries in the conduct of their respective businesses are (a) insured to the extent and in a manner customary in the industry in which such Loan Party or such Subsidiaries are engaged, (b) structurally sound with no known defects which have or could reasonably be expected to have a Material Adverse Effect, (c) in good operating condition and repair, subject to ordinary wear and tear, (d) not in need of maintenance or repair except for ordinary, routine maintenance and repair the cost of which is immaterial, (e) sufficient for the operation of the businesses of such Loan Party and its Subsidiaries as currently conducted and (f) in conformity with all applicable laws, ordinances, orders, regulations and other requirements (including applicable zoning, environmental, motor vehicle safety, occupational safety and health laws and regulations) relating thereto, except where the failure to conform could not reasonably be expected to have a Material Adverse Effect.

4.20 **Labor Matters**. Neither such Loan Party nor any of its Subsidiaries is engaged in any unfair labor practice. There (a) is no material unfair labor practice complaint pending against such Loan Party or any of its Subsidiaries or, to the best knowledge of such Loan Party, threatened against any of them, before any Governmental Authority, and no grievance or arbitration proceeding arising out of or under collective bargaining agreements that has or could reasonably be expected to have a Material Adverse Effect is so pending against such Loan Party or any of its Subsidiaries or, to the best knowledge of such Loan Party, threatened against any of them, (b) is no strike, labor dispute, slowdown or stoppage pending against either of such Loan Party or any of its Subsidiaries or, to the best knowledge of such Loan Party, threatened against any of them, and (c) are no union representation questions with respect to the employees of such Loan Party or any Subsidiaries and, except as set forth on Schedule 4.20, no union organizing activities. None of any Loan Party or its Subsidiaries has incurred any liability or obligation under the Worker Adjustment and Retraining Notification Act or similar state law, which remains unpaid or unsatisfied. The hours worked and payments made to employees of each Loan Party and its Subsidiaries have not been in violation of the Fair Labor Standards Act or any other applicable legal requirements, except to the extent such violations could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect. All material payments due from any Loan Party or its Subsidiaries on account of wages and employee health and welfare insurance and other benefits have been paid or accrued as a liability on the books of Borrowers, except where the failure to do so could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

4.21 **Investment Company, Etc**. No Loan Party nor any of its Subsidiaries is subject to regulation under the Federal Power Act or the Investment Company Act of 1940 or under any other federal or state statute or regulation which may limit its ability to incur Indebtedness or which may otherwise render all or any portion of the Obligations unenforceable. No Loan Party nor any of its Subsidiaries is a "registered investment company" or a company "controlled" by a "registered investment company" or a "principal underwriter" of a "registered investment company" as such terms are defined in the Investment Company Act of 1940.

4.22 **Margin Stock**. Neither any Loan Party nor any of its Subsidiaries owns any Margin Stock or is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying any Margin Stock. No part of the proceeds of the Loans made to Borrowers will be used to purchase or carry any Margin Stock or to extend credit to others for the purpose of purchasing or carrying any Margin Stock or for any purpose that violates the provisions of Regulation

T, U or X of the Board of Governors. Neither any Loan Party nor any of its Subsidiaries expects to acquire any Margin Stock.

4.23 **No Event of Default**. Other than the Specified Defaults and any Default or Event of Default arising out of the Chapter 11 Cases, no Default or Event of Default has occurred and is continuing.

4.24 **Taxes and Tax Returns**. Each Loan Party has filed, or caused to be filed, all material tax returns (federal, state, local and foreign) required to be filed and paid all amounts of taxes shown thereon to be due (including interest and penalties) and has paid all other material taxes, fees, assessments and other governmental charges (including mortgage recording taxes, documentary stamp taxes and intangibles taxes) owing by it, except for such taxes (a) that are not yet delinquent, (b) that are being contested in good faith and by proper proceedings, and against which adequate reserves are being maintained in accordance with GAAP, or (c) the payment of which is stayed by the Chapter 11 Cases or otherwise permitted to remain unpaid pursuant to the Bankruptcy Code or the DIP Orders. None of the Loan Parties is aware of any proposed material tax assessments against it or any other Loan Party, except as could not reasonably be expected to have a Material Adverse Effect.

4.25 **No Other Indebtedness**. Such Loan Party has no Indebtedness that is senior, pari passu or subordinated in right of payment to their Indebtedness to the Lenders hereunder, except for Permitted Indebtedness.

4.26 **Orders**. After entry of the Interim DIP/Cash Collateral Order, the Interim DIP/Cash Collateral Order is in full force and effect and has not been vacated, reversed or rescinded or, without the prior written consent of the Agent (acting at the direction of the Required Lenders), amended or modified, and no appeal of such Interim DIP/Cash Collateral Order has been timely filed or, if timely filed, no stay pending such appeal is currently effective. After entry of the Final DIP/Cash Collateral Order, the Final DIP/Cash Collateral Order is in full force and effect and has not been vacated, reversed or rescinded or, without the prior written consent of the Agent (acting at the direction of the Required Lenders), amended or modified, and no appeal of such Final DIP/Cash Collateral Order has been timely filed or, if timely filed, no stay pending such appeal is currently effective.

4.27 **Bankruptcy Matters**. (a) The Chapter 11 Cases were validly commenced on the Petition Date, and (x) proper notice under the circumstances of the motion seeking approval of the Loan Documents and entry of the DIP Orders was given, and (y) the hearing for the approval of the Interim DIP/Cash Collateral Order has been held by the Bankruptcy Court. (b) After the entry of the DIP Orders, and subject to the terms of the DIP Orders, the Obligations will constitute DIP Superpriority Claims and the Liens securing the Obligations shall be senior secured, valid, enforceable, and automatically and properly perfected priming Liens on the Collateral, having the priorities set forth in the DIP Orders, subject in all respects to the Carve-Out and other exceptions set forth in the DIP Orders and the Loan Documents.

4.28 **Material Contracts**. Schedule 4.28 sets forth a true, correct and complete list of all the Material Contracts currently in effect on the Closing Date. No Loan Party has taken any action, or failed to take any action, that could reasonably be expected to result in the cancellation or termination of any Material Contract prior to its stated maturity, except where such cancellation or termination could not reasonably be expected to result in a Material Adverse Effect. All of the Material Contracts are in full force and effect, and no material defaults currently exist thereunder, except, in each case, as disclosed on Schedule 4.28 or as could not reasonably be expected to result in a Material Adverse Effect.

4.29 **Survival of Representations**. All representations made by such Loan Party in this Agreement (including by incorporation by reference in the Guaranty and Security Agreement) and in any other Loan Document shall survive the execution and delivery hereof and thereof.

4.30 **[Reserved]**.

4.31 **Trade Suppliers**. Schedule 4.31 is a true, correct and complete list of all of the suppliers that have sold goods to any Loan Party or any of its Subsidiaries during the twelve month period ended on the Petition Date, for an amount representing 10% or more of the accounts payable of such Loan Party and its Subsidiaries for such period (each a "Major Supplier"), and Schedule 4.31 is a true, correct and complete list of all such Major Suppliers that have sold goods to the Loan Parties during the twelve month period ended on the date an update to Schedule 4.31 is requested by the Agent.

4.32 **Key Members of Management**. Schedule 4.32 is a true, correct and complete list of the key members of management of such Loan Party as of the Closing Date.

4.33 **Accuracy and Completeness of Information**. All factual information heretofore, contemporaneously or hereafter furnished by or on behalf of the Loan Parties or any of their respective Subsidiaries in writing to the Agent, any Lender, or the Independent Accountant for purposes of or in connection with this Agreement or any Loan Documents, or any transaction contemplated hereby or thereby is or will be true and accurate in all material respects on the date as of which such information is dated or certified and not incomplete by omitting to state any material fact necessary to make such information not misleading at such time, taken as a whole and giving effect to all supplements and updates thereto. There is no fact now known to any officer of any Loan Party or any of its Subsidiaries that has, or would have, a Material Adverse Effect which fact has not been set forth herein, in the Financials, in the materials filed in the Chapter 11 Cases, in any Budget, or in any certificate, opinion or other written statement made or furnished by any Loan Party to the Agent, other than facts, events and circumstances customarily and reasonably resulting from the commencement and continuation of the Chapter 11 Cases and the Liquidation Process. The information provided in any Beneficial Ownership Certification delivered under this Agreement is true and correct in all respects on the date on which such Beneficial Ownership Certification is delivered.

4.34 **[Reserved]**.

4.35 **OFAC; Sanctions; Anti-Corruption Laws; Anti-Money Laundering Laws**. No Loan Party or any of its Subsidiaries is in violation of any Sanctions. No Loan Party nor any of its Subsidiaries nor, to the knowledge of such Loan Party, any director, officer, employee, agent or Affiliate of such Loan Party or such Subsidiary (a) is a Sanctioned Person or a Sanctioned Entity, (b) has any assets located in Sanctioned Entities, or (c) derives revenues from investments in, or transactions with Sanctioned Persons or Sanctioned Entities. Each of the Loan Parties and its Subsidiaries has implemented and maintains in effect policies and procedures reasonably designed to ensure compliance with Sanctions, Anti-Corruption Laws and Anti-Money Laundering Laws. Each of the Loan Parties and its Subsidiaries, and to the knowledge of each such Loan Party, each director, officer, employee, agent and Affiliate of each such Loan Party and each such Subsidiary, is in compliance with all Sanctions, Anti-Corruption Laws and Anti-Money Laundering Laws. No proceeds of any Loan made hereunder will be used to fund any operations in, finance any investments or activities in, or make any payments to, a Sanctioned Person or a Sanctioned Entity, or otherwise used in any manner that would result in a violation of any Sanction, Anti-Corruption Law or Anti-Money Laundering Law by any Person, including any Lender, Bank Product Provider or other individual or entity participating in any transaction.

4.36 **Deposit Accounts**. As of the Closing Date, none of the Loan Parties has any checking, savings or other accounts at any bank or other financial institution, or any other account where money is or may be deposited or maintained with any Person that is not described on Schedule 4.36. Schedule 4.36 accurately sets forth the purpose for which each such deposit account is maintained.

4.37 **Securities Accounts**. As of the Closing Date, no Loan Party has any Securities Account at any bank or other intermediary that is not described on Schedule 4.37. Schedule 4.37 accurately sets forth the purpose for which each such Securities Account is maintained.

4.38 **Force Majeure**. None of any Borrower's nor any Guarantor's business is suffering from effects of fire, accident, strike, drought, storm, earthquake, embargo, tornado, hurricane, act of God, acts of a public enemy or other casualty that would reasonably be likely to have a Material Adverse Effect.

4.39 **Patriot Act**. To the extent applicable, each Loan Party is in compliance, in all material respects, with the (a) Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto, and (b) Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA Patriot Act of 2001, as amended) (the "Patriot Act").

4.40 **Hedge Agreements**. On each date that any Hedge Agreement is executed by any Hedge Provider, Borrower and each other Loan Party shall satisfy all eligibility, suitability and other requirements under the Commodity Exchange Act (7 U.S.C. § 1, et seq., as in effect from time to time) and the Commodity Futures Trading Commission regulations.

5. AFFIRMATIVE COVENANTS.

Until all of the Credit and Collateral Termination Events have occurred, each Borrower and (by execution and delivery of the Guaranty and Security Agreement or of a joinder thereto and incorporation by reference therein) each Guarantor agrees that, unless the Required Lenders shall have otherwise consented in writing:

5.1 Financial Information.

The Parent Borrower will furnish to the Agent, the Lenders and the Lender Professionals the following information within the following time periods:

(a) [reserved];

(b) [reserved];

(c) [reserved];

(d) [reserved];

(e) [reserved];

(f) promptly upon receipt thereof, copies of all management letters and other material reports which are submitted to the Parent Borrower by its Independent Accountant in connection with any annual or interim audit of the books of the Parent Borrower made by such accountants;

(g) as soon as practicable but in any event, within ten Business Days after the issuance thereof, copies of such other financial statements and reports as the Parent Borrower shall send to the holders of its Equity Interests as such, and copies of all regular and periodic reports which the Parent Borrower may be required to file with the Securities and Exchange Commission or any similar or

corresponding governmental commission, department or agency substituted therefor, or any similar or corresponding Governmental Authority;

(h) promptly upon receipt thereof, copies of all notices and environmental reviews and audits delivered to the Parent Borrower or sent by the Parent Borrower with respect to any Funded Indebtedness, including any notice of default;

(i) promptly and in any event within two Business Days after becoming aware of the occurrence of a Default or Event of Default, a certificate of the chief executive officer, chief financial officer, chief administrative officer or treasurer of the Parent Borrower specifying the nature thereof and the Loan Parties' proposed response thereto, each in reasonable detail;

(j) [reserved];

(k) [reserved];

(l) on the fifteenth day of each month, a report setting forth on a state-by-state basis, the amount of excise taxes due in each state for such month;

(m) promptly but in any event within two Business Days after any Loan Party acquires any Margin Stock, notice of such acquisition, together with a description of the Margin Stock and a Form U-1 (with sufficient additional originals thereof for each Lender) duly executed and delivered by the Borrowers, together with such other documentation as the Agent shall reasonably request, in order to enable the Agent and the Lenders to comply with any of the requirements under Regulations T, U or X of the Federal Reserve Board;

(n) no later than 5:00 p.m. (New York City time) on Friday of each week, commencing with the first full calendar week after the week in which the Closing Date occurs, the Borrowers shall deliver to the Agent an updated 13-week budget and cash flow forecast for the following 13-week period in a form consistent with the Budget. The proposed updated budget delivered on every fourth calendar week, commencing with the fourth full calendar week after the week in which the Closing Date occurs (such updated budget, the "Proposed Budget"), shall be subject to the approval of the Agent and the Required Lenders (such approval not to be unreasonably withheld, conditioned, or delayed) and, once so approved, shall become the Approved Budget for the following testing period. To the extent that any Proposed Budget is not approved by the Agent and the Required Lenders, the then-existing Approved Budget will remain in effect until replaced by a Proposed Budget that is approved by the Agent and the Required Lenders; provided, that, if a Proposed Budget has been delivered to the Agent and all DIP Revolving Lenders, and if neither the Agent nor Required Lenders have objected in writing to the Proposed Budget within four (4) Business Days after receiving the Proposed Budget, such Proposed Budget shall be deemed acceptable to and approved by the Agent and the Required Lenders and become the Approved Budget. The Borrowers may submit a supplemental updated Proposed Budget from time-to-time subject to the approval of the Agent and the Required Lenders (such approval not to be unreasonably withheld, conditioned, or delayed);

(o) no later than 5:00 p.m. (New York City time) on Friday of each week, commencing with the Friday of the second week following the week in which the Petition Date occurs, a variance report, each in form, detail and substance reasonably acceptable to the Agent and consistent with the Loan Parties' prepetition reporting to the Lender Professionals, setting forth the cash balance as of the end of each week therein and the difference between, on a line-by-line and aggregate basis, (i) actual operating receipts and budgeted operating receipts on a line-item basis as set forth in the Approved Budget in effect for the relevant periods, and (ii) actual operating disbursements and budgeted operating disbursements on a line-item basis as set forth in the Approved Budget, excluding, for the avoidance of doubt, professional fees and expenses

of the professionals retained in the Chapter 11 Cases, in each case, for the applicable period tested under Section 6.17, and together with a reasonably detailed explanation of such variances;

(p) no later than 5:00 p.m. (New York City time) on Friday of each week, commencing with the first full calendar week following the week in which the Petition Date occurs, a report setting forth all cash received by the Loan Parties and their Subsidiaries during the immediately preceding week, including cash received from Accounts, sale of Inventory, sale of joint venture interests, sale of other assets, settlements, insurance, condemnation, casualty proceeds or otherwise, and the application of such cash in accordance with Section 2.4;

(q) no later than 5:00 p.m. (New York City time) on Friday of each week, commencing with the first full calendar week following the week in which the Petition Date occurs, weekly inventory reporting for the immediately preceding calendar week in form, detail and substance reasonably satisfactory to Agent;

(r) at least two (2) Business Days advance delivery of all material pleadings, motions and other material documents filed with the Bankruptcy Court by the Loan Parties in the Chapter 11 Cases to the Agent and the Agent's advisors, unless not reasonably practicable under the circumstances (in which case, as soon as reasonably practicable prior to filing and subject to any confidentiality restrictions);

(s) at least five (5) Business Days prior to the consummation thereof (or as otherwise agreed in writing by Agent), reporting and information, in summary form, related to any proposed material asset sales and other dispositions of material assets that are reasonably expected to result in Net Cash Proceeds of at least $5,000,000 for any such disposition or series of related dispositions.

(t) with reasonable promptness, such other data or reporting as the Agent may reasonably request; and

(u) upon request by the Agent, an update to Schedule 4.31.

5.2 **Inventory**. To the extent requested by Agent, within 30 days after the end of each month, or more frequently upon the request of the Agent from time to time, the Loan Parties will provide to the Agent written statements listing items of Inventory in reasonable detail as requested by the Agent. The Loan Parties will conduct a physical count of their Inventory and a copy of such count will be promptly supplied to the Agent accompanied by a report of the value (valued at FIFO) of such Inventory at such times and as of such dates as the Agent shall reasonably request.

5.3 **Organizational Existence**.

Except as otherwise expressly set forth herein, in the DIP Orders or in any other Loan Document, each Loan Party and each of its Subsidiaries (a) will maintain their current corporate or other organizational existence, (b) will maintain in full force and effect all material licenses, bonds, franchises, leases, trademarks and qualifications to do business, (c) will obtain or maintain all material contracts and other rights necessary or desirable to the conduct of their businesses, (d) will continue in, and limit their operations to, the same general lines of business as that presently conducted by them and (e) will comply with all applicable laws and regulations of any federal, state or local Governmental Authority, except where noncompliance could not reasonably be expected to have a Material Adverse Effect.

5.4 **ERISA**.

The Loan Parties will deliver to the Agent, at the Loan Parties' expense, the following information at the times specified below:

(a) within ten Business Days after any Loan Party or any of its Subsidiaries or ERISA Affiliates knows or has reason to know that a ERISA Event that could reasonably be expected to result in a Material Adverse Effect has occurred, a written statement of the chief financial officer or chief administrative officer of the Parent Borrower describing such ERISA Event and the action, if any, which such Loan Party or other such entities have taken, are taking or propose to take with respect thereto, and when known, any action taken or threatened by the IRS, DOL or PBGC with respect thereto;

(b) within ten Business Days after any Loan Party or any of its ERISA Affiliates knows or has reason to know that a prohibited transaction (as defined in Section 406 of ERISA and Section 4975 of the IRC) that could reasonably be expected to result in a material civil penalty under Section 406 of ERISA (and for which a statutory or class exemption is not available or a private exemption has not been previously obtained from the DOL) or a material excise tax under Section 4975 of the IRC has occurred with respect to an Employee Benefit Plan, a statement of the chief financial officer or chief administrative officer of the Parent Borrower describing such transaction and the action which such Loan Party or other such entities have taken, are taking or propose to take with respect thereto;

(c) within 30 Business Days after the filing thereof with the DOL, IRS or PBGC, copies of each annual report (form 5500 series), including all schedules and attachments thereto (including the audit, if required), filed with respect to each Pension Plan;

(d) within 30 Business Days after receipt by any Loan Party or any of its Subsidiaries or ERISA Affiliates of each actuarial report for any Pension Plan or Multiemployer Plan, copies of each such report;

(e) within three Business Days after the filing thereof with the IRS, a copy of each funding waiver request filed with respect to any Pension Plan and all communications received by any Loan Party or any of its Subsidiaries or ERISA Affiliates with respect to such request;

(f) within ten Business Days upon the occurrence thereof, notification of any increase in the benefits of any existing Pension Plan or the establishment of any new Pension Plan or the commencement of contributions to any Pension Plan or Multiemployer Plan to which any Loan Party or any of its Subsidiaries or ERISA Affiliates was not previously contributing;

(g) within three Business Days after receipt by any Loan Party or any of its Subsidiaries or ERISA Affiliates of the PBGC's intention to terminate a Pension Plan or to have a trustee appointed to administer a Pension Plan, copies of each such notice;

(h) within ten Business Days after receipt by any Loan Party or any of its ERISA Affiliates of any favorable determination letter from the IRS regarding the qualification of a Pension Plan under Section 401(a) of the IRC or any unfavorable determination letter from the IRS regarding the qualification of a Employee Benefit Plan under Section 401(a) of the IRC, copies of each such letter;

(i) within ten Business Days after receipt by any Loan Party or any of its Subsidiaries or ERISA Affiliates of a notice regarding the imposition of Withdrawal Liability, copies of each such notice;

(j) within ten Business Days after any Loan Party or any of its Subsidiaries or ERISA Affiliates fails to make a required Installment or any other required payment under Sections 412, 430, 431,

or 432 of the IRC on or before the due date for such Installment or payment, a notification of such failure; and

(k) within ten Business Days after any Loan Party or any of its ERISA Affiliates knows (a) a Multiemployer Plan has been terminated, (b) the administrator or plan sponsor of a Multiemployer Plan intends to terminate a Multiemployer Plan, or (c) the PBGC has instituted or will institute proceedings under Section 4042 of ERISA to terminate a Multiemployer Plan, a written statement describing any such event or information.

For purposes of this Section 5.4, any Loan Party or any of its Subsidiaries or ERISA Affiliates shall be deemed to know all facts known by the administrator of any Employee Benefit Plan of which such entity is the plan sponsor.

The Loan Parties will establish, maintain and operate all Employee Benefit Plans (other than Multiemployer Plans) to comply in all material respects with the provisions of ERISA, the IRC, and all other applicable laws, and the regulations and interpretations thereunder other than to the extent that the Loan Parties are in good faith contesting by appropriate proceedings the validity or implication of any such provision, law, rule, regulation or interpretation.

5.5 **Proceedings or Adverse Changes**.

The Loan Parties will as soon as possible, and in any event within five Business Days after any Loan Party learns of the following, give written notice to the Agent of (a) any proceeding(s) seeking damages in excess of $10,000,000 (to the extent not covered by independent third-party insurance as to which the insurer has not denied coverage) being instituted or threatened to be instituted by or against any Loan Party or any of its Subsidiaries in any federal, state, local or foreign court or before any commission or other regulatory body (federal, state, local or foreign), and (b) any Material Adverse Effect. Provision of such notice by the Loan Parties will not constitute a waiver or excuse of any Default or Event of Default occurring as a result of such changes or events.

5.6 **Environmental Matters**.

Each Loan Party will conduct its business and the businesses of each of the Subsidiaries so as to comply in all material respects with all environmental laws, regulations, directions, ordinances, criteria and guidelines in all jurisdictions in which any of them is or may at any time be doing business, including environmental land use, occupational safety or health laws, regulations, directions, ordinances; criteria, guidelines, requirements or permits in all jurisdictions in which any of them is or may at any time be doing business, except to the extent that any Loan Party or any of its Subsidiaries is contesting, in good faith by appropriate legal proceedings, any such law, regulation, direction, ordinance, criteria, guideline, or interpretation thereof or application thereof; provided, further, that each Loan Party and each of its Subsidiaries will comply with the order of any court or other governmental body of the applicable jurisdiction relating to such laws unless such Loan Party or such Subsidiary shall currently be prosecuting an appeal or proceedings for review and shall have secured a stay of enforcement or execution or other arrangement postponing enforcement or execution pending such appeal or proceedings for review. If any Loan Party or any of its Subsidiaries shall (a) receive notice that any violation of any federal, state, municipal or local environmental law, regulation, direction, ordinance, criteria or guideline may have been committed or is about to be committed by such Loan Party or any of its Subsidiaries, (b) receive notice that any administrative or judicial complaint or order has been filed or is about to be filed against such Loan Party or any of its Subsidiaries alleging violations of any federal, state, municipal or local environmental law, regulation, direction, ordinance, criteria or guideline or requiring such Loan Party or any of its Subsidiaries to take any action in connection with the release of toxic or hazardous substances into the

environment or (c) receive any notice from a federal, state, municipal or local governmental agency or private party alleging that such Loan Party or any of its Subsidiaries may be liable or responsible for costs associated with a response to or cleanup of a release of a toxic or hazardous substance into the environment or any damages caused thereby, the Loan Parties will provide the Agent with a copy of such notice within 15 days after the receipt thereof by the applicable Loan Party or any of its Subsidiaries. Within 15 days after any Loan Party learns of the enactment or promulgation of any federal, state, municipal or local environmental law, regulation, direction, ordinance, criteria or guideline which could reasonably have a Material Adverse Effect, such Loan Party will provide the Agent with notice thereof. Each Loan Party will promptly take all actions necessary to prevent the imposition of any Liens on any of its properties arising out of or related to any environmental matters. At the request of the Agent from time to time, but in any event not more frequently (unless and Event of Default exists) than once in any 12 month period, and at the sole cost and expense of the Loan Parties, the Loan Parties will retain an environmental consulting firm, satisfactory to the Agent in its Permitted Discretion, to conduct an environmental review and audit of the properties of the Loan Parties and their Subsidiaries located in the United States and provide to the Agent and each Lender a copy of any reports delivered in connection therewith.

5.7 **Books and Records; Inspection**.

Each Loan Party will, and will cause each of its Subsidiaries to, maintain books and records pertaining to the Collateral in such detail, form and scope as is consistent with good business practice. Subject to the DIP Orders, each Loan Party agrees that the Agent or its agents may enter upon the premises of each Loan Party or any of its Subsidiaries at any time and from time to time, during normal business hours upon reasonable prior notice (and at any time during the occurrence and continuance of an Event of Default), for the purpose of (a) enabling the Agent's internal auditors or outside third-party designees to conduct field examinations at such Loan Party's expense; provided that, absent an ongoing Event of Default, not more than one such field examination during the Chapter 11 Cases shall be conducted upon the reasonable written request of Agent and at the Loan Parties' expense, (b) inspecting the Collateral, (c) inspecting and/or copying, at such Loan Party's expense, any and all records pertaining thereto, and (d) discussing the affairs, finances and business of any Loan Party with any officers, employees and directors of any Loan Party or with the Independent Accountant.

The Lenders, in the reasonable discretion of the Agent, may accompany the Agent at their sole expense in connection with the foregoing inspections. The Agent reserves the right, exercisable from time to time hereafter in the Agent's commercially reasonable judgment, to require that the Borrowers and/or any Guarantors obtain, and the Borrowers and/or such Guarantors shall so obtain, at the Borrowers' expense, appraisals or updates to any existing appraisals reflecting then-current OLV of the Inventory; provided that, absent an ongoing Event of Default, not more than one appraisal of the Loan Parties' Inventory during the Chapter 11 Cases shall be conducted at the Loan Parties' expense.

Each Loan Party agrees to afford the Agent 30 days' prior written notice of any change in the location of any Collateral (other than Inventory held for shipment by third Persons, Inventory in transit, Inventory held for processing by third Persons, immaterial quantities of assets, equipment or Inventory, or Inventory sold in connection with asset sales and other dispositions of assets disclosed to the Agent pursuant to the terms of this Agreement and permitted by the Chapter 11 Cases and the DIP Orders), its jurisdiction of organization or the location of its chief executive office or place of business from the locations specified on Schedule 4.7, and to execute in advance of such change, cause to be filed and/or delivered to the Agent any financing statements or other documents required by the Agent, all in form and substance satisfactory to the Agent. Each Loan Party agrees to advise the Agent promptly, in sufficient detail, of any substantial change relating to the type, quantity or quality of the Collateral or any event which could reasonably be expected to have a Material Adverse Effect. Each Loan Party agrees to furnish any Lender with such other

information regarding its business affairs and financial condition as such Lender may reasonably request from time to time.

5.8 **Collateral Records**.

Each Loan Party will, and will cause each of its Subsidiaries to, execute and deliver to the Agent, from time to time, solely for the Agent's convenience in maintaining a record of the Collateral, such written statements and schedules as the Agent may reasonably require, including those described in Section 5.1, designating, identifying or describing the Collateral pledged to the Lenders hereunder. Any Loan Party's failure, however, to promptly give the Agent such statements or schedules shall not affect, diminish, modify or otherwise limit the Lenders' security interests in the Collateral. Such Loan Party agrees to maintain such books and records regarding the Collateral as the Agent may reasonably require, and agrees that such books and records will reflect the Lenders' interest in the Accounts and such other Collateral.

5.9 **Security Interests**.

Each Loan Party will defend the Collateral against all claims and demands of all Persons at any time claiming the same or any interest therein, subject to Permitted Liens. Each Loan Party agrees to, and will cause the other Loan Parties to, comply with the requirements of all federal, state, and local laws necessary in order to grant to the Agent, for the benefit of the Lenders, valid and perfected security interests in the Collateral, having the priorities set forth in the DIP Orders and subject to no other Liens other than Permitted Liens. The Agent is hereby authorized by each Loan Party to file any financing statements covering the Collateral whether any Loan Party's signature appears thereon. Each Loan Party agrees to do whatever the Agent may reasonably request, from time to time, by way of: filing notices of liens, financing statements, fixture filings and amendments, renewals and continuations thereof; cooperating with the Agent's custodians; keeping Capital Stock records; paying claims, that might if unpaid, become a Lien (other than a Permitted Lien) on the Collateral; and performing such further acts as the Agent may reasonably require in order to effect the purposes of this Agreement and the other Loan Documents. Any and all fees, costs and expenses of whatever kind and nature (including any Taxes, reasonable attorneys' fees or costs for insurance of any kind), that the Agent may incur with respect to the Collateral or the Obligations: in filing public notices; in preparing or filing documents; in making personal property title examinations or rendering opinions; in protecting, maintaining, or preserving the Collateral or its interest therein; in enforcing or foreclosing the Liens hereunder, whether through judicial procedures or otherwise; or in defending or prosecuting any actions or proceedings arising out of or relating to its transactions with any Loan Party or any of its Subsidiaries under this Agreement or any other Loan Document, will be borne and paid by the Loan Parties. If same are not promptly paid by the Loan Parties, the Agent may pay same on the Loan Parties' behalf, and the amount thereof shall be an Obligation secured hereby and due to the Agent on demand. If any Loan Party acquires or leases any Real Property after the date hereof, such Loan Party will promptly submit to the Agent an updated Schedule 4.19 pursuant to Section 5.24. Notwithstanding the foregoing, the Agent shall not enter into any Mortgage in respect of any Real Property acquired by any Loan Party after the Closing Date until (a) the date which is 45 days after the Agent has delivered to the Lenders (which may be delivered electronically) the following documents in respect of such Real Property: (i) a completed flood hazard determination from a third party vendor, (ii) if such Real Property is located in a "special flood hazard area," (A) a notification to the applicable Loan Party of that fact and (if applicable) notification to the applicable Loan Party that flood insurance is not available and (B) evidence of receipt by the applicable Loan Party of such notice, and (iii) if such notice is required to be provided to the applicable Loan Party and flood insurance is available in the community in which such Real Property is located, evidence of flood insurance, and (b) the Agent shall have received written confirmation from the Lenders that flood insurance due diligence and flood insurance compliance has been completed by the Lenders (such written confirmation not to be unreasonably conditioned, withheld or delayed).

5.10 **Insurance; Casualty Loss**.

Each Loan Party will, and will cause each of the Subsidiaries to, maintain public liability insurance, third party property damage insurance and replacement value insurance on the Collateral under such policies of insurance, with such insurance companies, in such amounts and covering such risks as are at all times satisfactory to the Agent in its Permitted Discretion. If at any time the area in which any Real Property Collateral is located is designated a "flood hazard area" in any Flood Insurance Rate Map published by the Federal Emergency Management Agency (or any successor agency), obtain flood insurance in such total amount and on terms that are reasonably satisfactory to Agent and all Lenders from time to time, and otherwise comply with the Flood Laws or as is otherwise satisfactory to Agent and all Lenders. All policies covering the Collateral are to name the Loan Parties and the Agent as additional insureds and loss payees in case of loss, as their interests may appear, and are to contain such other provisions as the Agent may reasonably require to protect fully the Agent's interest in the Collateral and to any payments to be made under such policies. True copies of all original insurance policies or certificates of insurance evidencing such insurance covering the Collateral are to be delivered to the Agent on or prior to the Closing Date, with the lender's loss payable endorsements in the Agent's favor, and shall provide for not less than 30 days prior written notice to the Agent of the exercise of any right of cancellation (or ten days in the event of non-payment of premium). In the event any Loan Party or any of its Subsidiaries fails to respond in a timely and appropriate manner (as determined by the Agent in its Permitted Discretion) with respect to collecting under any insurance policies required to be maintained under this Section 5.10, the Agent shall have the right, in the name of the Agent, such Loan Party or Subsidiary, to file claims under such insurance policies, to receive and give acquittance for any payments that may be payable thereunder, and to execute any and all endorsements, receipts, releases, assignments, reassignments or other documents that may be necessary to effect the collection, compromise or settlement of any claims under any such insurance policies. Each Loan Party will provide written notice to the Agent of the occurrence of any of the following events within five Business Days after the occurrence of such event: any Collateral is (a) materially damaged or destroyed, or suffers any other loss or (b) is condemned, confiscated or otherwise taken, in whole or in part, or the use thereof is otherwise diminished so as to render impracticable or unreasonable the use of such Collateral for the purpose to which such Collateral was used immediately prior to such condemnation, confiscation or taking, by exercise of the powers of condemnation or eminent domain or otherwise, and in either case the amount of the damage, destruction, loss or diminution in value of the Collateral is in excess of $1,000,000 (collectively, a "Casualty Loss"). Each Loan Party will diligently file and prosecute its claim or claims for any award or payment in connection with a Casualty Loss. Subject to the DIP Orders, the Loan Parties will pay to the Agent, promptly upon receipt thereof, any and all insurance proceeds and payments received by any Loan Party or any of its Subsidiaries on account of any Casualty Loss, and such proceeds and payments shall be applied in accordance with Section 2.4. After the occurrence and during the continuation of an Event of Default, (x) no settlement on account of any such Casualty Loss shall be made without the consent of the Agent and (y) the Agent may participate in any such proceedings and the Loan Parties will deliver to the Agent such documents as may be requested by the Agent to permit such participation and will consult with the Agent, its attorneys and agents in the making and prosecution of such claim or claims. Each Loan Party hereby irrevocably authorizes and appoints the Agent as its attorney-in-fact, after the occurrence and during the continuation of an Event of Default, to collect and receive any such award or payment and to file and prosecute such claim or claims, which power of attorney shall be irrevocable and shall be deemed to be coupled with an interest, and each Loan Party shall, upon demand of the Agent, make, execute and deliver any and all assignments and other instruments sufficient for the purpose of assigning any such award or payment to the Agent for the benefit of the Lenders, free and clear of any encumbrances of any kind or nature whatsoever.

5.11 **Taxes**.

Each Loan Party will, and will cause each of the Subsidiaries to, pay, when due and in any event prior to delinquency, all Taxes lawfully levied or assessed against any Loan Party, any of its Subsidiaries or any of the Collateral; provided, however, that unless such Taxes have given rise to a Lien on any of the assets of any Loan Party or any of its Subsidiaries (except as regards Taxes not yet due and payable), no such Tax need be paid if (a) the same is being contested in good faith, by appropriate proceedings promptly instituted and diligently conducted and if an adequate reserve or other appropriate provision shall have been made therefor as required in order to be in conformity with GAAP, (b) the payment thereof is stayed by the Chapter 11 Cases or otherwise permitted to remain unpaid pursuant to the Bankruptcy Code, the DIP Orders or any other order of the Bankruptcy Court, or (c) the failure to pay such Tax would not reasonably be expected to result in a Material Adverse Effect.

5.12 **Compliance With Laws**.

Each Loan Party will, and will cause each of its Subsidiaries to, comply with all acts, rules, regulations, orders, directions and ordinances of any legislative, administrative or judicial body or official applicable to the Collateral or any part thereof, or to the operation of its business, except where the failure to so comply could not reasonably be expected to have a Material Adverse Effect. In addition to the foregoing, (a) each Loan Party will, and will cause each of its Subsidiaries to comply with all applicable Sanctions, Anti-Corruption Laws and Anti-Money Laundering Laws; (b) each of the Loan Parties and its Subsidiaries shall implement and maintain in effect policies and procedures designed to ensure compliance by the Loan Parties and their Subsidiaries and their respective directors, officers, employees, agents and Affiliates with all Sanctions, Anti-Corruption Laws and Anti-Money Laundering Laws; (c) each of the Loan Parties shall and shall cause their respective Subsidiaries to comply with all Sanctions, Anti-Corruption Laws and Anti-Money Laundering Laws; and (d) each of the Loan Parties shall and shall cause their respective Subsidiaries to comply with the Controlled Substances Act.

5.13 **[Reserved]**.

5.14 **Fiscal Year; Accounting Policies**.

Each Loan Party agrees that it will not change its Fiscal Year unless required by law, in which case such Loan Party will give the Agent at least 30 days prior written notice thereof. Subject to Section 1.2, each Loan Party agrees that it will not, unless required by law or regulation, change its accounting policies from those used to prepare the financial statements delivered pursuant to Section 5.1(c) without the prior written consent of the Agent.

5.15 **Notification of Certain Events**.

Each Loan Party agrees that it will promptly notify the Agent of the occurrence of any of the following events:

(a) to the extent requested by Agent, any Material Contract of any Loan Party or any of its Subsidiaries is terminated or amended in any material respect or any new Material Contract is entered into (in which event each Loan Party shall provide the Agent with a copy of such Material Contract);

(b) to the extent requested by Agent, any of the material terms upon which a Major Supplier to any Loan Party or any of its Subsidiaries does business with any Loan Party or any Subsidiary are changed or amended in any material respect;

(c) other than the Chapter 11 Cases, any DIP Order or any other order of the Bankruptcy Court, any order, judgment or decree in excess of $2,500,000 shall have been entered against any Loan Party or any of its Subsidiaries or any of their respective properties or assets;

(d) any notification of violation of any law or regulation or any inquiry shall have been received by any Loan Party or any of its Subsidiaries from any local, municipal, state, federal or foreign Governmental Authority or agency, which violation is reasonably likely to have a Material Adverse Effect;

(e) any notice of default under or termination of any of the Loan Parties' liquor licenses;

(f) any notice of the intent to enforce any tax lien imposed on any Loan Party or any of its Subsidiaries; and

(g) any Asset Disposition or Casualty Loss in excess of $1,000,000, together with a certification by the Parent Borrower setting forth the amount and date of such Asset Disposition or Casualty Loss, the gross proceeds received or expected to be received in connection therewith, the calculation of Net Cash Proceeds with respect thereto and the amount of such Net Cash Proceeds applied or required to be applied to prepay the Obligations pursuant to Section 2.4.

5.16 **Additional Guarantors**.

The Loan Parties will not form or acquire any Foreign Subsidiary (other than RNDC Canada) except to the extent permitted by this Agreement and the DIP Orders. Upon any Person becoming a direct or indirect Subsidiary of the Parent Borrower, the Loan Parties (1) shall provide the Agent with written notice thereof setting forth information in reasonable detail describing all of the assets of such Person, (2) shall execute, as applicable, and deliver a pledged interest addendum to the Guaranty and Security Agreement in respect of all of the Capital Stock of such Subsidiary owned by the Loan Parties (together with any certificates representing such Capital Stock and undated transfer powers signed in blank), and (3) shall (a) cause such Person to execute and deliver to the Agent (i) a joinder to the Guaranty and Security Agreement, in each case, together with such other security agreements, as well as appropriate financing statements, all in form and substance reasonably satisfactory to Agent (including being sufficient to grant Agent a first priority Lien (subject to Permitted Liens) in and to the assets of such newly formed or acquired Subsidiary, other than Excluded Property) (provided, however, that RNDC Canada shall not be required to execute or deliver any such supplement to the Guaranty and Security Agreement); (ii) provide, or cause the applicable Loan Party to provide, to Agent a pledge agreement (or an addendum to the Guaranty and Security Agreement) and appropriate certificates and powers or financing statements, pledging all of the direct or beneficial ownership interest in such new Subsidiary in form and substance reasonably satisfactory to Agent (which pledge, if reasonably requested by Agent, shall be governed by the laws of the jurisdiction of such Subsidiary); and (b) cause such Person to deliver such additional documents of the types described in clause (a) above or in connection with such documents being delivered under such clauses as the Agent reasonably shall request, including appropriate UCC financing statements, certified resolutions and other Governing Documents and authorizing documents of such Person and favorable opinions of counsel to such Person (which shall cover, among other things, the legality, validity, binding effect and enforceability of the documentation referred to above), all in form, content and scope reasonably satisfactory to the Agent; provided, however, in lieu of becoming a Guarantor, at the option of the Agent, the Loan Parties shall cause such Person to execute and deliver to the Agent (x) a Joinder causing such Subsidiary to become a party to this Agreement as a joint and several "Borrower", and (y) joinder to Guaranty and Security Agreement, and other documents described above, as applicable and with the same effect set forth above. Any document (other than opinions) delivered in connection with this Section 5.16 shall constitute a "Loan Document". Notwithstanding anything to the contrary contained herein, Agent shall not accept delivery of any joinder

to any Loan Document with respect to any Subsidiary of any Loan Party that is not a Loan Party, if such Subsidiary qualifies as a "legal entity customer" under the Beneficial Ownership Regulation, unless such Subsidiary has delivered a Beneficial Ownership Certification in relation to such Subsidiary and Agent and the Lenders have completed their Patriot Act searches, OFAC/PEP searches and customary individual background checks for such Subsidiary, the results of which shall be satisfactory to Agent and the Lenders.

5.17 **Bi-Weekly Process Calls**.

The Borrowers shall host bi-weekly conference calls or video conference calls with the Lenders, Agent and the Lender Professionals, together with management and the Loan Parties' advisors, to review the operations of the Loan Parties, Budgets, Variance Reports, cash receipts, Asset Dispositions and any other information reasonably requested by any Lender or Agent, at times reasonably acceptable to Agent and Borrowers.

5.18 **[Reserved]**.

5.19 **Notice; Credit Memoranda; and Returned Goods**.

To the extent requested by Agent, each Loan Party will provide reasonable details to the Agent promptly of any matters materially affecting the value, enforceability or collectability of any Account, and of all material customer disputes, offsets, defenses, counterclaims, returns and rejections, and all reclaimed or repossessed merchandise or goods, provided, however, that such notice shall only be required as to any such matter that affects Accounts outstanding at any one time from any account debtor, which affected Accounts have a value greater than $250,000. Each Loan Party will issue credit memoranda promptly (with duplicates to the Agent upon its request for same) upon accepting returns or granting allowances, and may continue to do so until the occurrence of an Event of Default that has not otherwise been waived in writing by the Required Lenders. After the occurrence and during the continuance of an Event of Default, each Loan Party agrees that all returned, reclaimed or repossessed merchandise or goods shall be set aside by such Loan Party, marked with the Agent's name and held by the Agent for the Lenders, as owner and assignee.

5.20 **[Reserved]**.

5.21 **Trademarks**.

Each Loan Party will do and cause to be done all things necessary to preserve and keep in full force and effect all registrations of trademarks, service marks and other marks, trade names or other trade rights, if any, except with respect to any such intellectual property as to which Parent Borrower's president, chief executive officer, or chief financial officer shall have determined, in good faith and in writing, that such intellectual property is no longer material to the conduct of the business of any Loan Party.

5.22 **Maintenance of Property**.

Each Loan Party will, and will cause each of its Subsidiaries to, keep all property useful and necessary to its respective business in good working order and condition (ordinary wear and tear excepted) in accordance with its past operating practices and not to commit or suffer any waste with respect to any of its properties, except for properties which either individually or in the aggregate are not material.

5.23 **Beneficial Ownership**. Upon request by Agent or any Lender from time to time, Borrowers shall promptly provide an update to the information provided in any Beneficial Ownership Certificate delivered pursuant to this Agreement, if there has been any change to the list of beneficial owners

identified in the then most recently delivered Beneficial Ownership Certification (or, if there has been no such change, written confirmation from the Parent Borrower that there has been no such change).

5.24 **[Reserved]**.

5.25 **Milestones**. The Loan Parties shall achieve the following milestones by the dates set forth below (provided, that any of the following milestones may be extended by up to five (5) Business Days by the Agent in its discretion):

(a) on the Petition Date or the immediately succeeding Business Day thereafter, the Debtors shall file (x) a motion with the Bankruptcy Court seeking approval of the DIP Facility and (y) forms of such other First Day Orders mutually acceptable to the Required DIP Lenders and the Debtors, including on account of a proposed settlement with Reyes;

(b) on or before the date that is three (3) Business Days after the Petition Date, the Interim DIP/Cash Collateral Order shall have been entered by the Bankruptcy Court;

(c) on or before the date that is five (5) Business Days after the Petition Date, the Debtors shall have filed a Plan and disclosure statement (both in form and substance reasonably satisfactory to the Agent and the Required Lenders) with the Bankruptcy Court, which such Plan provides for repayment in full in cash of the DIP Facility on the effective date thereof (unless otherwise consented to by the Agent and all DIP Revolving Lenders);

(d) on or before the date that is thirty (30) days after the Petition Date, the Loan Parties shall have delivered to the Agent fully executed copies of binding purchase agreements, in each case, in form and substance satisfactory to the Agent and the Required Lenders (including for a purchase price acceptable to the Agent and the Required Lenders), related to sales pursuant to Section 363 of the Bankruptcy Code, as applicable, for all or substantially all (or such lesser amount as may be acceptable to Agent and Required Lenders) of the Loan Parties' assets (including the equity interests or substantially all of the assets of all of the Joint Ventures owned by the Loan Parties as of the Petition Date), in each case, that are contemplated to be sold as a going concern (or with respect to a specified region) (collectively, the "Sales");

(e) on or before the date that is thirty-five (35) days after the Petition Date, the Final DIP/Cash Collateral Order shall have been entered by the Bankruptcy Court;

(f) on or before the date that is seventy (70) days after the Petition Date, the Bankruptcy Court shall have entered an order, in form and substance reasonably satisfactory to the Agent and the Required Lenders, (i) confirming the Plan, or (ii) approving the Sales as may be required under the Bankruptcy Code; and

(g) on or before the date that is seventy-five (75) days after the Petition Date, (i) the Plan shall have become effective or (ii) the closing of the Sales and application of the net proceeds thereof shall have occurred.

5.26 **Bankruptcy Related Matters**.

(a) The Loan Parties shall cause all proposed (i) "first day" orders, (ii) "second day" orders, (iii) orders related to or affecting the Obligations and/or the Loan Documents, the Prepetition Facility Obligations and Prepetition Facility Documents, any other financing or use of Cash Collateral, any sale or other disposition of Collateral outside the ordinary course or adequate protection, (iv) any Plan

and/or any disclosure statement related thereto, (v) orders concerning the financial condition of the Chapter 11 Debtors, or other Indebtedness of the Chapter 11 Debtors and (vi) orders establishing procedures for administration of the Chapter 11 Cases or approving significant transactions submitted to the Bankruptcy Court, in each case, proposed by the Chapter 11 Debtors, to be in accordance with the terms of this Agreement in all material respects and reasonably acceptable to Agent.

(b) The Loan Parties shall comply in all material respects with each order entered by the Bankruptcy Court in connection with the Chapter 11 Cases.

(c) The Loan Parties shall deliver to the Agent and the Lender Professionals not less than two (2) Business Days, prior to any filing, copies of all proposed material pleadings, motions, applications, orders and other material documents to be filed by or on behalf of the Loan Parties with the Bankruptcy Court in the Chapter 11 Cases; provided that, if not reasonably practicable as a result of exigent circumstances, such materials shall be delivered as soon as reasonably practicable. The Loan Parties shall consult in good faith with the Agent, the Lender Professionals and the Required Lenders regarding the form and substance of any such document.

(d) The Loan Parties shall, if not otherwise provided through the Bankruptcy Court's electronic docketing system, deliver to the Agent and to the Lender Professionals promptly as soon as available, copies of all final pleadings, motions, applications, orders, financial information and other documents distributed by or on behalf of the Loan Parties to any official or unofficial committee appointed or appearing in the Chapter 11 Cases or any other party in interest unless not reasonably practicable under the circumstances (in which case, as soon as reasonably practicable and which may be redacted with respect to any information subject to confidentiality restrictions).

(e) Any and all obligations arising under or in connection with the DIP Facility, including for reasonable and documented fees, costs, and out-of-pocket expenses of the Agent and Lenders, including the reasonable and documented, out-of-pocket fees, costs, and expenses of Paul Hastings LLP, as counsel to the Agent, and Carl Marks Advisors, as financial advisors to the Agent, reimbursable under the Loan Documents, all Obligations, and all guarantees of the Obligations, in each case, subject only to the Carve-Out at all times:

(i) pursuant to section 364(c)(1) of the Bankruptcy Code, shall be entitled to joint and several superpriority administrative expense claim status in the Chapter 11 Cases, and except as otherwise provided herein shall have priority over all other administrative expense claims of any kind, including those specified in, or ordered pursuant to, sections 105, 326, 328, 330, 331, 503(b), 506(c) (and, subject to entry of the Final DIP/Cash Collateral Order granting such relief, all rights to charge the Collateral and collateral securing the prepetition obligations under section 506(c) of the Bankruptcy Code shall be waived), 507(a), 507(b), 546(c), 726, 1113, or 1114 or any other provision of the Bankruptcy Code or otherwise and be payable from all assets and property of the Loan Parties, subject and junior only to the Carve-Out and Prior Permitted Liens; and

(ii) shall be secured by, (x) subject to section 364(d) of the Bankruptcy Code, super-priority priming liens and automatically perfected, valid, enforceable, and non-avoidable security interests in substantially all now owned or hereafter acquired Collateral (as defined in the Prepetition Facility Credit Agreement), including without limitation any assets included in the Borrowing Base (as defined in the Prepetition Facility Credit Agreement) and the proceeds of any licenses (to the extent that liens on such licenses are prohibited by applicable law or otherwise), (y) subject to section 364(c)(2) of the Bankruptcy Code, first-priority liens and perfected, valid, and enforceable security interests in (A) all proceeds of unencumbered assets and (B) all other previously unencumbered assets of the Loan Parties as may be reasonably agreed by the Agent and the Loan Parties (including any non-economic interests in any

Joint Ventures and motor vehicles owned by the Loan Parties, subject to the receipt of the necessary approvals but excluding any Avoidance Actions), and (z) a junior, second-priority lien on assets of the Loan Parties that are subject to (A)(1) valid, perfected, and non-avoidable liens in favor of third parties that are in existence as of the Petition Date or (2) valid liens in existence as of the Petition Date that are perfected subsequent to such commencement as permitted by section 546(b) of the Bankruptcy Code, in each case that are senior in priority to the Collateral and are permitted to be incurred under the Prepetition Facility Credit Agreement or (B) liens permitted to have seniority over the liens securing the DIP Facility as specified in this Agreement and reasonably consented to by the Agent and, in each case, any proceeds and products thereof in whatever form received; provided, that, the Collateral shall exclude Avoidance Actions; provided, further, that subject only to, and effective upon, entry of the Final DIP/Cash Collateral Order, Collateral shall include any proceeds or property recovered, unencumbered or otherwise, which are the subject of any successful Avoidance Actions, whether by judgment, settlement or otherwise.

(f) Notwithstanding anything to the contrary contained herein or elsewhere (except as specifically described below or under the DIP Orders):

(i) the parties hereto agree, and the DIP Orders shall provide, that the Loan Parties shall not be required to prepare, file, register or publish any financing statements, mortgages, Control Agreements, notices of Lien or similar instruments in any jurisdiction or filing or registration office, or to take possession of any Collateral or to take any other action in order to validate, render enforceable or opposable or perfect the Liens on the Collateral granted by or pursuant to this Agreement, the DIP Orders, or any other Loan Document. Subject to the limitations set forth herein and in the DIP Orders, if the Agent (in its sole discretion), from time to time elects to prepare, file, register or publish any such financing statements, mortgages, Control Agreements, notices of Lien or similar instruments, or take any other action to validate, render enforceable or opposable or perfect all or any portion of the Agent's Liens on the Collateral, (A) all such documents and actions shall be deemed to have been filed, registered, published or recorded or taken at the time and on the date that the DIP Orders are entered, and (B) shall not negate or impair the validity or effectiveness of this Section 5.26 or of the perfection or opposability of any other Liens in favor of the Agent, for the benefit of the Lenders and the other Loan Parties, on the Collateral; and

(ii) except as otherwise agreed to by the Required Lenders or as otherwise permitted or contemplated by this Agreement, the DIP Orders or the other Loan Documents, the Liens, Lien priorities, DIP Superpriority Claims and other rights and remedies granted to the Loan Parties pursuant to this Agreement, the DIP Orders or the other Loan Documents (specifically including, but not limited to, the existence, perfection, opposability enforceability and priority of the Liens provided for herein and therein, and the DIP Superpriority Claims provided herein and therein) shall not be modified, altered or impaired in any manner by any other financing or extension of credit or incurrence of indebtedness by any Borrower or any other Loan Party (pursuant to Section 364 of the Bankruptcy Code or otherwise), or by dismissal or conversion of the Chapter 11 Cases, or by any other act or omission whatsoever.

6. **NEGATIVE COVENANTS**.

Until all of the Credit and Collateral Termination Events have occurred, each Borrower and (by execution and delivery of the Guaranty and Security Agreement or of a joinder thereto and incorporation by reference therein) each Guarantor agrees that, unless the Required Lenders shall have otherwise consented in writing, it will not, and will not permit any of its Subsidiaries to:

6.1 **Restrictions on Liens**. Mortgage, assign, pledge, transfer or otherwise permit any Lien or judgment (whether as a result of a purchase money or title retention transaction, or other security interest, or otherwise) to exist on any of its assets or properties, whether real, personal or mixed, whether now owned or hereafter acquired, except for Permitted Liens.

6.2 **Restrictions on Additional Indebtedness**.

Incur or create any Indebtedness or Funded Indebtedness other than Permitted Indebtedness.

6.3 **Restrictions on Sale of Assets**.

Sell, lease, assign, transfer or otherwise dispose of any assets (including the Capital Stock of any Subsidiary of the Parent Borrower) other than: (a) sales or discounting of Inventory in the ordinary course of business; (b) bulk sales or other sales of Inventory outside of the ordinary course of business, including at a discount, solely to the extent (i) such sale is on terms satisfactory to the Agent and the Required Lenders (as evidenced by the Agent's (at the direction of the Required Lenders) prior written consent (email being sufficient) to any such sale), (ii) such sale is not prohibited by the DIP Orders and (iii) the cash proceeds thereof are applied in accordance with Section 2.4; (c) sales or other dispositions in the ordinary course of business of assets or properties (excluding Real Property Collateral) that are obsolete or that are no longer used or useful in the conduct of such Loan Party's or Subsidiary's business, solely to the extent the cash proceeds thereof are applied in accordance with Section 2.4; (d) sales in the ordinary course of business of assets or properties (other than Inventory or Real Property Collateral) used in such Loan Party's or Subsidiary's business that are worn out or in need of replacement and that are replaced with assets of reasonably equivalent value or utility; (e) sales, leases, assignments, transfers and other dispositions of assets permitted by Section 6.8 solely to the extent the cash proceeds thereof are applied in accordance with Section 2.4; (f) Asset Dispositions expressly contemplated by the Approved Budget and permitted by the DIP Orders or any other order of the Bankruptcy Court reasonably acceptable to Agent and the Required Lenders, in each case, solely to the extent (i) on terms and pursuant to documentation in form and substance satisfactory to the Agent and the Required Lenders and (ii) the cash proceeds thereof are applied in accordance with Section 2.4; (g) the closure of Deposit Accounts and Securities Accounts that contain zero balance as of the time of such closure and are no longer in use by any Loan Party; and (h) the sale of equipment subject to Prior Permitted Liens in favor of equipment financing providers.

6.4 **No Organizational Changes**.

(a) Merge or consolidate with any Person, divide, dissolve, liquidate, wind up or otherwise effect any fundamental change, except solely to the extent expressly contemplated by the Plan, the Approved Budget, the DIP Orders or another order of the Bankruptcy Court acceptable to Agent and the Required Lenders;

(b) Alter or modify any Loan Party's or any of its Subsidiary's Governing Documents or form of organization in any manner adverse to the interests of the Agent or the Lenders or in any way that could reasonably be expected to have a Material Adverse Effect;

(c) Without providing 30 days prior written notice to the Agent and without filing (or confirming that the Agent has filed) such amendments to any previously filed financing statements or other applicable recordings or filings as the Agent may require for the purpose of maintaining the perfection or priority of any security interest or Lien, (i) change its jurisdiction of incorporation, organization, or formation, (ii) change its registered corporate name, (iii) change the location of its registered office, chief executive office and principal place of business (as well as its books and records) from the locations set forth on Schedule 4.7, (iv) change the location of its Collateral from the locations set forth for such Person on Schedule 4.7, or (v) effect any alteration or modification permitted under Section 6.4(b); or

(d) Enter into or engage in any business, operation or activity materially different from that being conducted by the Loan Parties on the Closing Date.

6.5 **No Guarantees**.

Assume, guarantee, endorse, or otherwise become liable upon the obligations of any other Person, including any Subsidiary or Affiliate of any Loan Party, except (a) by the endorsement of negotiable instruments in the ordinary course of business, (b) by the giving of indemnities in connection with the sale of Inventory or other sales or dispositions not prohibited under the Loan Documents or the DIP Orders and (c) in connection with the incurrence of Permitted Indebtedness; provided, that, notwithstanding the foregoing, from and after the Closing Date, no such guarantees in respect of Permitted Indebtedness may be incurred except in the ordinary course of business or with the prior written consent of the Agent.

6.6 **No Restricted Payments**.

Make any Restricted Payment, other than dividends or distributions by any Subsidiary to a Loan Party, in each case solely to the extent permitted by the Approved Budget and the DIP Orders.

6.7 **No Investments**.

Except for Permitted Investments, directly or indirectly, make or acquire any Investment or incur any liabilities (including contingent obligations) for or in connection with any Investment.

6.8 **No Affiliate Transactions**.

Subject to Section 6.24, enter into any transaction with, including the purchase, sale or exchange of property or the rendering of any service to, any Subsidiary or Affiliate of any Loan Party except (a) in the ordinary course of and pursuant to the reasonable requirements of such Loan Party's business and upon fair and reasonable terms no less favorable to such Loan Party than could be obtained in a comparable arm's-length transaction with an unaffiliated Person, (b) between Loan Parties, (c) as permitted under Sections 6.2, 6.5, 6.6, and 6.7, and (d) dispositions of securities, cash, or other property on account of reasonable and customary awards, grants, compensation, or other obligations to directors, officers, managers, and employees of the Loan Parties in the ordinary course of business, in each case, solely to the extent consistent with the Approved Budget and permitted by the DIP Orders.

6.9 **No Prohibited Transactions Under ERISA**.

(a) Engage, or permit any ERISA Affiliate to engage, in any prohibited transaction with respect to an Employee Benefit Plan that could reasonably be expected to result in a material civil penalty under Section 406 of ERISA (and for which a statutory or class exemption is not available or a private exemption has not been previously obtained from the DOL) or a material excise tax under Section 4975 of the IRC;

(b) incur, or permit any ERISA Affiliate to incur, any fine, penalty, tax, or related charges under Chapter 43 of the IRC or under Section 409, Section 502(c), 502(i) or 502(l) of ERISA, or Section 4071 of ERISA in respect to any Employee Benefit Plan;

(c) fail to satisfy, or permit any ERISA Affiliate to fail to satisfy, with respect to any Pension Plan the minimum funding standards (as defined in Sections 302(a)(2) of ERISA and Section 412(a) of the IRC), whether or not waived;

(d) fail, or permit any ERISA Affiliate to fail, to pay timely to any Pension Plan required contributions or annual Installments due with respect to any waived funding deficiency;

(e) terminate, or permit any ERISA Affiliate to terminate, any Pension Plan where such event would result in any liability of the Loan Party or any of its Subsidiaries or ERISA Affiliates under Title IV of ERISA, where such termination could reasonably be expected to have a Material Adverse Effect;

(f) fail, or permit any ERISA Affiliate to fail, to make any required contribution or payment to any Multiemployer Plan;

(g) fail, or permit any ERISA Affiliate to fail, to pay any required Installment or any other payment required under Section 412 or 430(j) of the IRC on or before the due date for such Installment or other payment;

(h) amend, or permit any ERISA Affiliate to amend, a Pension Plan resulting in an increase in current liability for the plan year such that any of the Loan Parties or any of their Subsidiaries or ERISA Affiliates is required to provide security to such Pension Plan under Section 401(a)(29) of the IRC;

(i) withdraw, or permit any ERISA Affiliate to withdraw, from any Multiemployer Plan where such withdrawal may result in any Withdrawal Liability of any such entity under Title IV of ERISA, where such withdrawal could reasonably be expected to have a Material Adverse Effect; or

(j) allow any representation made in Section 4.14 to be untrue at any time during the term of this Agreement.

6.10 **No Additional Deposit Accounts or Securities Accounts**.

Open, maintain or otherwise have any Deposit Accounts or Securities Accounts at any bank or other financial institution, or any other account where money is or may be deposited or maintained with any Person, other than the accounts set forth on Schedule 4.36 and 4.37, except to the extent otherwise determined by the Agent in its Permitted Discretion.

6.11 **No Excess Cash**.

Fail to remit cash to Agent or apply cash in accordance with Section 2.4. No Loan Party shall maintain cash or Cash Equivalents outside of the cash management arrangements approved by Agent and authorized by the DIP Orders, except to the extent (i) expressly permitted by the Approved Budget or Agent or (ii) such cash is cash collateral subject to Prior Permitted Liens in favor only of the Prepetition Secured Parties.

6.12 **Restrictions on the Payment of Certain Indebtedness**. Optionally prepay, redeem, defease, purchase, or otherwise acquire any Indebtedness of any Loan Party or its Subsidiaries, other than (a) the Obligations in accordance with this Agreement, (b) payments of Indebtedness constituting Permitted Indebtedness solely to the extent such payment is expressly permitted by the Approved Budget and the DIP Orders, (c) Hedge Obligations, (d) the payment by a Loan Party of any intercompany Indebtedness to any other Loan Party and payment by any Subsidiary which is not a Loan Party of any intercompany Indebtedness to any Loan Party, solely to the extent permitted by the Approved Budget and the DIP Orders, and (e) payments in respect of Prepetition Facility Obligations solely to the extent expressly permitted by the DIP Orders.

6.13 **Use of Proceeds**. Use the proceeds of DIP Revolving Loans for any purpose other than (a) to fund the Carve-Out, (b) to pay the transaction and administrative costs, fees, and expenses incurred

in connection with the Chapter 11 Cases, (c) to pay any and all interest, charges, fees and reasonable and documented out-of-pocket expenses incurred in connection with the Loan Documents (each as required hereunder), (d) to provide working capital and for the general corporate purposes of the Loan Parties, (e) to pay the approved fees and expenses of the Professionals, and (f) for such other purposes (including, without limitation, the fees, costs, expenses, and indemnities incurred hereunder) subject to the reasonable consent of the Agent, in each case in accordance with and subject to the Budget, the Loan Documents, and the DIP Orders.

6.14 **Amendments of Material Contracts**.

Without the prior written consent of the Agent, except as otherwise set forth or contemplated in the Approved Budget, the DIP Orders, the Plan or any other order of the Bankruptcy Court, amend, modify, cancel or terminate or permit the amendment, modification, cancellation or termination of any of the Material Contracts, except for any amendments or modifications the effect of which is not materially adverse to the Loan Party thereto or the Lender Group.

6.15 **Additional Negative Pledges**.

Create or otherwise cause or suffer to exist or become effective, or permit any of the Subsidiaries to create or otherwise cause or suffer to exist or become effective, directly or indirectly, (a) any prohibition or restriction (including any agreement to provide equal and ratable security to any other Person in the event a Lien is granted to or for the benefit of the Lender Group) on the creation or existence of any Lien upon the assets of any Loan Party or any of its Subsidiaries, other than Liens on Real Property and Equipment which are subject to Permitted Liens securing Permitted Indebtedness, or (b) any Contractual Obligation which may restrict or inhibit the Agent's rights or ability to sell or otherwise dispose of the Collateral or any part thereof after the occurrence of an Event of Default.

6.16 **No Application to DIP Term Loans Prior to DIP Revolving Facility Payoff**.

No Loan Party shall apply, or permit the application of, any cash proceeds or other amounts to the DIP Term Loans unless and until the DIP Revolving Commitments have been terminated, all DIP Revolving Loans and related Obligations, including all fees, expenses and other Obligations owing to Agent, have been paid in full in cash, and Agent has retained such portion of remaining funds as Agent determines is necessary or appropriate as collateral for future fees, expenses and other Obligations of Agent related to the Chapter 11 Cases.

6.17 **Budget Compliance; Liquidity**.

(a) Commencing with the first Test Period ending after the Petition Date, no Loan Party shall, nor shall it permit any of its Subsidiaries to, permit the Disbursement Variance on an aggregate basis with respect to any Test Period exceed the Permitted Variances; provided, that any favorable variance achieved by the Company as compared to the Approved Budget during any Test Period shall be carried forward and applied to offset any unfavorable variances in subsequent Test Periods for purposes of determining compliance with this Section 6.17(a).

(b) As of 5:00 p.m. (New York City time) on Friday of each week, commencing with the second full calendar week after the Petition Date, the Loan Parties shall maintain Liquidity of not less than 85% of the forecasted weekly Liquidity set forth in the then-current Approved Budget for such week then-ended.

6.18 **Licenses, Etc**.

Enter into licenses of, or otherwise restrict the use of, any patents, trademarks or copyrights that would prevent any Loan Party or any of its Subsidiaries from selling, transferring, encumbering or otherwise disposing of any such patent, trademark or copyright.

6.19 **Limitations**.

Create or otherwise cause, incur, assume, suffer or permit to exist or become effective any consensual encumbrance or restriction of any kind on the ability of any such Person to (a) pay dividends or make any other distribution on any of such Person's Capital Stock, (b) pay any Indebtedness owed to the Loan Parties, (c) make loans or advances to any other Loan Party or (d) transfer any of its property to any other Loan Party, except for encumbrances or restrictions existing under or by reason of (i) customary non-assignment provisions in any lease governing a leasehold interest, (ii) customary non-assignment provisions in any documents, instruments, or agreements evidencing or executed and delivered in connection with any Permitted Indebtedness secured only by Real Property or Equipment (and the proceeds thereof), (iii) any agreement or other instrument of a Person existing at the time it becomes a Subsidiary of a Loan Party; provided that such encumbrance or restriction is not applicable to any other Person, or any property of any other Person, other than such Person becoming a Subsidiary of a Loan Party and was not entered into in contemplation of such Person becoming a Subsidiary of a Loan Party, (iv) this Agreement and the other Loan Documents and (v) the DIP Orders.

6.20 **RNDC Canada**. Any provision in this Agreement or any other Loan Document to the contrary notwithstanding, each Borrower hereby agrees that:

(a) such Borrower shall not, and shall not permit any Subsidiary of such Borrower to, directly or indirectly, make or acquire any Investment, or incur any liabilities (including contingent obligations) in, to or for the benefit of RNDC Canada, except solely to the extent expressly set forth in the Approved Budget, (ii) permitted by the DIP Orders and (iii) any such Investments in the form of a loan or advance made by a Loan Party to RNDC Canada shall be evidenced by a promissory note pledged pursuant to the Guaranty and Security Agreement; and

(b) such Borrower shall cause RNDC Canada to not have any material liabilities, own any material assets or engage itself in any operations or business, except to the extent expressly permitted by the Approved Budget and the DIP Orders.

6.21 **Chapter 11 Cases**.

No Loan Party shall, nor shall it permit any of its Subsidiaries to:

(a) except for the Carve-Out and as otherwise expressly set forth in the DIP Orders or the Loan Documents, incur, create, assume, suffer to exist or permit, or file any motion seeking, any superpriority claim which is pari passu with, or senior to, the Obligations;

(b) except as otherwise expressly set forth in the DIP Orders or the Loan Documents, incur, create, assume, suffer to exist or permit, or file any motion seeking, any Lien which is pari passu with, or senior to, the Liens granted to the Agent under the Loan Documents or the DIP Orders;

(c) make payments on any Indebtedness existing prior to the Petition Date or any payments to Affiliates (other than the Debtors), in each case, that are not provided for in the Approved

Budget and the DIP Orders or otherwise agreed by the Agent (acting at the direction of the Required Lenders) in writing;

(d) commence any adversary proceeding, contested matter or other action, or support any other Person's adversary proceeding, contested matter or other action, asserting any claims or defenses against, or seeking any surcharge under section 506(c) of the Bankruptcy Code or otherwise against, the Agent, any Lender, any other member of the Lender Group or any Prepetition Facility Secured Party, the Loan Documents, the transactions contemplated hereby or thereby, the Prepetition Facility Documents, the other documents or agreements executed or delivered in connection therewith or the transactions contemplated thereby;

(e) except as expressly set forth in the DIP Orders and solely to the extent of the budgeted amount set forth therein with respect to an Official Committee investigation prior to the Investigation Termination Date (as defined in the DIP Orders), use any Cash Collateral, proceeds of the Loans, or any cash or other amounts to (i) seek authorization to obtain Liens or security interest that are senior to or pari passu with Liens securing the Obligations, (ii) investigate claims against the Lenders and to commence actions against the Lenders (other than any investigations of claims or actions by any official committee of unsecured creditors permitted by the DIP Orders which shall be subject to the Carve-Out) or (iii) take any actions prohibited by the DIP Orders;

(f) seek, consent to, support, acquiesce in or permit the entry of any order under section 546(h) of the Bankruptcy Code without the prior written consent of Agent;

(g) seek, consent to, support, acquiesce in or permit the entry of any order granting reclamation claims or similar claims or relief with respect to any material Inventory or other Collateral, except to the extent expressly permitted by the DIP Orders or approved in writing by Agent; or

(h) enter an order in any of the Chapter 11 Cases authorizing the Chapter 11 Debtors (i) to obtain additional financing under section 364(c) or 364(d) of the Bankruptcy Code that does not provide for the repayment in full in cash of all Obligations under this Agreement, without the prior written consent of the Agent (acting at the direction of the Required Lenders).

6.22 **Cash Collateral**.

No Loan Party shall use Cash Collateral except (a) to make adequate protection payments to the Prepetition Facility Secured Parties, (b) to pay Obligations under the DIP Facility, (c) to make payments under the First Day Orders, and (d) in accordance with the Approved Budget, the Permitted Variances and the DIP Orders.

6.23 **Vendor Payments; Settlements**.

No Loan Party shall, nor shall it permit any of its Subsidiaries to, (a) accelerate payments to vendors, including for purposes of obtaining discounts, without the prior written consent of Agent, (b) enter into any settlement with NDC, New BG, any Affiliate of NDC or New BG without the prior written approval of Agent and the Required Lenders (and so long as the proceeds of any such settlement are applied in accordance with Section 2.4 or as otherwise consented to by the Agent and the Required Lenders), (c) enter into any other settlement with any Person in respect of claims with an aggregate value reasonably estimated to be at least $50,000,000, without the prior written approval of Agent and the Required Lenders (and so long as the proceeds of any such settlement are applied in accordance with Section 2.4), unless the Debtors are receiving concurrent payment in cash of the fair market value for such services, or (d) perform any services or otherwise provide value to or for the benefit of NDC or any Joint Venture without the prior

written approval of Agent and the Required Lenders, unless the Loan Parties (or their Subsidiaries) are receiving concurrent payment of fair value in cash in return therefor.

6.24 **Hedge Agreements**.

Engage in any transaction involving commodity options or futures contracts or any similar speculative transactions, except for Hedge Agreements, hedging practices that are used solely as part of normal business operations as a risk management strategy and/or hedge against changes resulting from market operations in accordance with such Borrower's or such Subsidiary's customary policies and not as a means to speculate for investment purposes.

7. **[RESERVED].**

8. **EVENTS OF DEFAULT**.

8.1 **Events of Default**. Any one or more of the following events shall constitute an event of default (each, an "Event of Default") under this Agreement:

(a) failure of any Borrower to pay any principal of, interest on, fees, expenses or any other amount constituting Obligations when due, whether at stated maturity, by acceleration or otherwise;

(b) any representation or warranty contained in this Agreement, the other Loan Documents or any other agreement, document, instrument or certificate among any Loan Party, the Agent and the Lenders or executed by any Loan Party in favor of the Agent or the Lenders shall prove untrue in any material respect on or as of the date it was made or was deemed to have been made;

(c) failure of any Loan Party to perform, comply with or observe any term, covenant or agreement applicable to it contained in Section 3.6, Section 5.1(i), Section 5.1(n), Section 5.1(o), Section 5.1(p), Section 5.1(q), Section 5.1(r), Section 5.1(s), Section 5.1(t), Section 5.3, Section 5.5, Section 5.7, Section 5.17, Section 5.25, Section 5.26, or Section 6;

(d) failure to comply with any other covenant contained in this Agreement, the other Loan Documents or any other agreement, document, instrument or certificate among any Loan Party, the Agent and the Lenders or executed by any Loan Party in favor of the Agent or the Lenders and, in the event such breach or failure to comply is capable of cure, such a breach or failure to comply is not cured within 30 days of its occurrence;

(e) except for dissolutions or mergers permitted under Section 6.4(a), dissolution, liquidation, winding up or cessation of the business of any Loan Party or any of its Subsidiaries, other than as expressly permitted by the DIP Orders or any other order of the Bankruptcy Court acceptable to the Required Lenders;

(f) the commencement by or against any Subsidiary of any Loan Party that is not a Chapter 11 Debtor of an Insolvency Proceeding with respect to it under any federal or state law;

(g) the occurrence of a Change of Control;

(h) any Loan Party or any of its Subsidiaries shall fail to make any payment in respect of Indebtedness outstanding (other than pursuant to clause (a) above) in an aggregate principal amount of $10,000,000 or more when due or within any applicable grace period; provided that no Event of Default shall arise under this clause (h) solely as a result of any failure to pay Indebtedness if the enforcement of

remedies with respect to such Indebtedness is subject to the automatic stay as a result of the Chapter 11 Cases, including with respect to any Prepetition Facility Obligations;

(i) any event or condition shall occur that results in (x) the acceleration of the maturity of Indebtedness outstanding of any Loan Party or any of its Subsidiaries in an aggregate principal amount of $10,000,000 or more (including any required mandatory prepayment or "put" of such Indebtedness to such Loan Party or Subsidiary) or enables (or, with the giving of notice or lapse of time or both, would enable) the holders of such Indebtedness or commitment or any Person acting on such holders' behalf to accelerate the maturity thereof or terminate any such commitment prior to its normal expiration (including any required mandatory prepayment or "put" of such Indebtedness to such Loan Party or Subsidiary) or (y) any default under or the termination of any Hedge Agreement; provided that no Event of Default shall arise under this clause (i) solely as a result of any such event or condition if the enforcement of remedies with respect to such Indebtedness or Hedge Agreement is subject to the automatic stay as a result of the Chapter 11 Cases, including with respect to any Prepetition Facility Obligations;

(j) any covenant, agreement or obligation of any party contained in or evidenced by any of the Loan Documents shall cease to be enforceable in accordance with its terms, or any party (other than the Lender Group) to any Loan Document shall deny or disaffirm its obligations under any of the Loan Documents, or any Loan Document shall be canceled, terminated, revoked or rescinded without the express prior written consent of the Agent, or any action or proceeding shall have been commenced by any Person (other than any member of the Lender Group) seeking to cancel, revoke, rescind or disaffirm the obligations of any party to any Loan Document, or any court or other Governmental Authority shall issue a judgment, order, decree or ruling to the effect that any of the obligations of any party to any Loan Document are illegal, invalid or unenforceable;

(k) [reserved];

(l) one or more judgments or decrees shall be entered against one or more of the Loan Parties or any of their Subsidiaries involving a liability of $10,000,000 or more in the aggregate, to the extent not paid or covered by insurance provided by a carrier who has acknowledged coverage and has the ability to perform or as otherwise determined by Agent in its Permitted Discretion; provided that no Event of Default shall arise under this clause (l) solely as a result of any judgment or decree if enforcement thereof is subject to the automatic stay as a result of the Chapter 11 Cases;

(m) any ERISA Event with respect to a Pension Plan shall have occurred and the then current value of such Pension Plan's benefits allocable to current or former employees of the Loan Party or any of its Subsidiaries or ERISA Affiliates guaranteed under Title IV of ERISA exceeds the then current value of such Pension Plan's assets allocable to such benefits by more than $10,000,000, or in the case of an ERISA Event involving the withdrawal of a substantial employer, the withdrawing employer's proportionate share of such excess exceeds such amount;

(n) any default or termination shall have occurred under any Material Contract to which any Loan Party is a party, which default or termination could reasonably be expected to have a Material Adverse Effect;

(o) any Loan Document shall fail to be in full force and effect or to give the Agent and/or the Lenders the security interests, Liens, rights, powers and privileges purported to be created thereby or pursuant to the DIP Orders (except as such documents may be terminated or no longer in force and effect in accordance with the terms thereof, other than those indemnities and provisions which by their terms shall survive);

(p) a material breach by the Chapter 11 Debtors of any DIP Order;

(q) except with the prior written consent of the Agent (at the direction of the Required Lenders), (x) the entry of an order in any of the Chapter 11 Cases (i) staying, reversing, amending, supplementing, vacating or otherwise modifying any of the Loan Documents, the Interim DIP/Cash Collateral Order or the Final DIP/Cash Collateral Order, as applicable, in a manner that is adverse to the Lenders or (ii) impairing or modifying any of the Liens, security interests, claims, rights, remedies, privileges, benefits or protections granted under the Loan Documents or under the DIP Orders to the Lender Group or the Prepetition Facility Secured Parties or (y) the issuance by any court of competent jurisdiction of any final, non-appealable order with respect to a motion, pleading, or proceeding brought by another party that results in any impairment contemplated by the foregoing clause (x)(ii);

(r) the failure of any of the Chapter 11 Debtors to comply in all material respects with any of the terms or conditions of the Interim DIP/Cash Collateral Order or the Final DIP/Cash Collateral Order;

(s) the dismissal of any of the Chapter 11 Cases or conversion of any of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code or if any Loan Party applies for, consents to, or acquiesces in such above relief;

(t) entry of an order appointing a chapter 11 trustee or any trustee, interim receiver, receiver, or receiver-manager with expanded powers with respect to any of the Chapter 11 Debtors;

(u) the use of Cash Collateral by the Chapter 11 Debtors shall be terminated and the Chapter 11 Debtors have not obtained use of cash collateral (consensually or non-consensually) pursuant to an order in form and substance acceptable to the Agent;

(v) except for the Carve-Out and except as expressly permitted hereunder or in the DIP Orders, the entry of an order in any of the Chapter 11 Cases granting any claim against any Chapter 11 Debtor entitled to superpriority administrative expense status in any of the Chapter 11 Cases that is pari passu with or senior to the claims of the Lender Group or the Prepetition Facility Adequate Protection Obligations granted to the Prepetition Facility Secured Parties, without the prior written consent of the Agent (acting at the direction of the Required Lenders);

(w) except for the Carve-Out and except as expressly permitted hereunder or in the DIP Orders, the entry of an order in any of the Chapter 11 Cases granting any Lien in Collateral that is pari passu with or senior to any Lien granted to the Agent or the Lenders, or any Prepetition Facility Adequate Protection Liens granted to the Prepetition Facility Secured Parties, without the prior written consent of the Agent (acting at the direction of the Required Lenders);

(x) except as provided in the DIP Orders, the making of any adequate protection payment or the granting of any adequate protection, including the granting of any Liens on the Collateral, superpriority claims, the right to receive cash payments or otherwise, without the prior written consent of the Agent (acting at the direction of the Required Lenders);

(y) the Loan Parties shall make any payments on account of claims or expenses arising under section 503(b)(9) of the Bankruptcy Code except in amounts and on terms and conditions that are permitted under the Approved Budget and that are otherwise consistent with the Loan Documents;

(z) the filing of a motion by any Loan Party (or any party in interest or the official committee of unsecured creditors or any other person) that is not dismissed or denied within 45 days after

the date of the filing of such motion, or the entry of any order in the Chapter 11 Cases, permitting recovery from any material portion of the Collateral (or from the Agent or any Lender) of any costs or expenses or preserving or disposing of Collateral under section 506(c) or 552(b) of the Bankruptcy Code (or otherwise), in an aggregate amount in excess of $250,000;

(aa) a chapter 11 plan shall be confirmed in any of the Chapter 11 Cases that does not provide for termination of the commitments under the DIP Facility and the indefeasible payment in full in cash of the Obligations thereunder (other than indemnities and other contingent obligations not then due and payable) on the effective date of such plan, unless otherwise consented to by the Agent (acting at the direction of the Required Lenders);

(bb) entry of a final non-appealable order in the Chapter 11 Cases that has a material adverse effect on the interests (when taken as a whole) of the Agent and the Lenders with respect to their material rights and remedies in their capacities as such under the DIP Facility in any of the Chapter 11 Cases;

(cc) subject to entry of the DIP Orders, the entry of any order in any of the Chapter 11 Cases (i) charging any of the Collateral with respect to the Lender Group, whether under Section 506(c) of the Bankruptcy Code or otherwise, or (ii) charging any of the Prepetition Facility Collateral with respect to the Prepetition Facility Secured Parties, whether under Section 506(c) of the Bankruptcy Code or otherwise;

(dd) any Chapter 11 Debtor shall consummate or seek to obtain Bankruptcy Court approval of any sale or other disposition of all or any portion of the Collateral pursuant to Section 363 of the Bankruptcy Code or otherwise, without the prior written consent of the Agent (acting at the direction of the Required Lenders), other than sales permitted under Section 6.3 or otherwise consented to in writing by the Agent and the Required Lenders;

(ee) the Loan Parties, or any person claiming by or through the Loan Parties, shall obtain court authorization to commence, or shall commence, join in, assist, or otherwise participate as an adverse party in any suit or other proceeding against the Agent or the Lenders relating to the DIP Facility, in their capacities as such;

(ff) any of the Chapter 11 Cases shall be removed to a different venue, or the Chapter 11 Cases shall be moved to a different venue in any other manner, without the prior written consent of the Agent (acting at the direction of the Required Lenders); or

(gg) the DIP Revolving Exposure shall at any time exceed the DIP Revolving Committed Amount, and such excess shall not have been repaid by the end of the same Business Day.

9. RIGHTS AND REMEDIES.

9.1 Rights and Remedies.

(a) Upon the occurrence and during the continuation of an Event of Default, subject in all respects to the DIP Orders, including any applicable notice requirements or remedies notice period set forth therein, the automatic stay applicable to Agent and the Lenders shall be modified and lifted to the extent set forth in the DIP Orders, and Agent may, and at the direction of the Required Lenders shall, in addition to any other rights or remedies provided hereunder, under any other Loan Document, under the DIP Orders or by applicable law, do any one or more of the following:

(i) declare the principal of, and any and all accrued and unpaid interest and fees in respect of, the Loans and all other Obligations (other than the Bank Product Obligations) to be immediately due and payable;

(ii) terminate, reduce or restrict the DIP Revolving Commitments;

(iii) restrict the making of additional DIP Revolving Loans; and

(iv) exercise all other rights and remedies available to Agent or the Lenders under the Loan Documents, the DIP Orders, applicable law or in equity.

(b) Notwithstanding the foregoing, the Chapter 11 Debtors, the United States Trustee for the Southern District of Texas, and any committee of unsecured creditors appointed pursuant to section 1102 of the Bankruptcy Code shall be entitled to an emergency hearing before the Bankruptcy Court within five (5) Business Days after the delivery of a written notice by the Agent (acting at the direction of the Required Lenders) to counsel to the Loan Parties of the occurrence of an Event of Default (such five (5) Business Day period, the "Remedies Notice Period," and such hearing, the "Enforcement Hearing"). At the Enforcement Hearing, the Bankruptcy Court may consider whether an Event of Default has occurred and whether the Chapter 11 Debtors are entitled to the non-consensual use of cash collateral and may fashion an appropriate remedy, including any rights and remedies with respect to the Collateral, in each case subject to the Carve-Out and pursuant to the DIP Orders to the extent the Bankruptcy Court determines that an Event of Default has occurred; provided, that during the Remedies Notice Period the Chapter 11 Debtors shall be permitted to use proceeds of the DIP Facility and any cash collateral solely to fund (x) payroll, taxes, statutory obligations, and other operating expenses that are critically necessary to keep the Debtors' businesses operating or that have been consented to by the Agent (at the direction of the Required Lenders) and (y) the Carve Out, and the Lenders shall not be obligated to make any DIP Revolving Loans during the Remedies Notice Period.

(c) Notwithstanding anything herein to the contrary, no enforcement rights shall be exercised prior to the Bankruptcy Court holding an Enforcement Hearing, subject to Bankruptcy Court availability, and the expiration of the Remedies Notice Period, and the Remedies Notice Period shall not expire until the conclusion of the Enforcement Hearing and the issuance of a ruling by the Bankruptcy Court.

9.2 **Remedies Cumulative**. The rights and remedies of the Lender Group under this Agreement, the other Loan Documents, the DIP Orders and all other agreements shall be cumulative. The Lender Group shall have all other rights and remedies not inconsistent herewith as provided under the Code, the Bankruptcy Code, by law, or in equity, in each case, subject to the DIP Orders. No exercise by the Lender Group of one right or remedy shall be deemed an election, and no waiver by the Lender Group of any Default or Event of Default shall be deemed a continuing waiver. No delay by the Lender Group shall constitute a waiver, election, or acquiescence by it.

9.3 **Bankruptcy Code and Other Remedies**.

(a) Without in any way limiting the foregoing, upon the occurrence and during the continuance of an Event of Default, subject in all respects to the DIP Orders, including any applicable notice requirements or remedies notice period set forth therein, the Agent (acting at the direction of the Required Lenders) may exercise, in addition to all other rights and remedies granted to it in this Agreement and the other Loan Documents, all rights and remedies of a secured party under the Bankruptcy Code, the Code and any other applicable law.

(b) Subject in all respects to the DIP Orders, including any applicable notice requirements or remedies notice period set forth therein, without limiting the generality of the foregoing, the Agent (acting at the direction of the Required Lenders) may, without demand of performance or other demand, presentment, protest, advertisement or notice of any kind, except any notice required by the DIP Orders or applicable law, to or upon any Loan Party, all and each of which demands, defenses, advertisements and notices are hereby waived except as required by the DIP Orders or applicable law, upon the occurrence and during the continuance of any Event of Default, directly or through its agents, designees or an acquisition vehicle, (i) enter upon the premises where any Collateral is located, without any obligation to pay rent, through self-help, without judicial process, without first obtaining a final judgment or giving any Loan Party notice or opportunity for a hearing on the Agent's claim or action, except to the extent required by the DIP Orders or applicable law, (ii) collect, receive, appropriate and realize upon any Collateral, (iii) dispose of, sell, grant option or options to purchase and deliver any Collateral, or enter into contractual obligations to do any of the foregoing, in one or more parcels at public or private sale or sales, at any exchange, broker's board or office of any member of the Lender Group or elsewhere upon such terms and conditions as it may deem advisable and at such prices as it may deem best, for cash or on credit or for future delivery without assumption of any credit risk, (iv) withdraw all cash and Cash Equivalents in any Deposit Account or Securities Account of a Loan Party and apply such cash and Cash Equivalents and other cash, if any, then held by it as Collateral in satisfaction of the Obligations, and (v) give notice and take sole possession and control of all amounts on deposit in or credited to any Deposit Account or Securities Account.

(c) Subject in all respects to the DIP Orders and the Carve-Out, the Agent (acting at the direction of the Required Lenders) shall have the right, upon any such public sale or sales and, to the extent permitted by the Bankruptcy Code and other applicable law, upon any such private sale, to purchase the whole or any part of the Collateral so sold, directly or through one or more acquisition vehicles, and, in lieu of actual payment of the purchase price, may credit bid or otherwise set off the amount of such price against all or any portion of the Obligations, free of any right or equity of redemption of any Loan Party, which right or equity is hereby waived and released.

(d) Subject in all respects to the DIP Orders, each Loan Party further agrees that, upon the occurrence and during the continuance of any Event of Default, (i) at the Agent's request (acting at the direction of the Required Lenders), it shall assemble the Collateral and make it available to the Agent at places that the Agent shall reasonably select, whether at such Loan Party's premises or elsewhere, (ii) without limiting the foregoing, the Agent (acting at the direction of the Required Lenders) also has the right to require that each Loan Party store and keep any Collateral pending further action by the Agent and, while any such Collateral is so stored or kept, provide such guards and maintenance services as shall be necessary to protect the same and to preserve and maintain such Collateral in good condition, (iii) until the Agent is able to sell any Collateral, the Agent shall have the right to hold or use such Collateral for the purpose of preserving the Collateral or its value or for any other purpose deemed appropriate by the Agent, and (iv) the Agent (acting at the direction of the Required Lenders) may seek the appointment of a receiver or keeper to take possession of any Collateral and to enforce any of the Agent's remedies, for the benefit of the Lender Group, with respect to such appointment without prior notice or hearing as to such appointment except to the extent required by the DIP Orders or applicable law. Subject to the DIP Orders, the Agent shall not have any obligation to any Loan Party to maintain or preserve the rights of any Loan Party as against third parties with respect to any Collateral.

(e) Subject in all respects to the DIP Orders, neither the Agent nor any other member of the Lender Group shall be required to make any demand upon, or pursue or exhaust any right or remedy against, any Loan Party or any other Person with respect to the payment of the Obligations or to pursue or exhaust any right or remedy with respect to any Collateral therefor or any direct or indirect guaranty thereof. All of the rights and remedies of the Agent and the Lender Group under any Loan Document shall be

cumulative, may be exercised individually or concurrently and are not exclusive of any other rights or remedies provided by applicable law, subject in all respects to the DIP Orders. Subject to the DIP Orders, to the extent it may lawfully do so, each Loan Party absolutely and irrevocably waives and relinquishes the benefit and advantage of, and covenants not to assert against the Agent or any Lender, any valuation, stay, appraisement, extension, redemption or similar laws and any and all rights or defenses it may have as a surety, now or hereafter existing, arising out of the exercise by them of any rights hereunder. If any notice of a proposed sale or other disposition of any Collateral shall be required by applicable law, such notice shall be deemed reasonable and proper if given at least ten (10) calendar days before such sale or other disposition.

10. **WAIVERS; INDEMNIFICATION**.

10.1 **Demand; Protest; etc**. Each Borrower waives demand, protest, notice of protest, notice of default or dishonor, notice of payment and nonpayment, nonpayment at maturity, release, compromise, settlement, extension, or renewal of documents, instruments, chattel paper, and guarantees at any time held by the Lender Group on which any Borrower may in any way be liable.

10.2 **The Lender Group's Liability for Collateral**. Each Borrower hereby agrees that: (a) so long as Agent complies with its obligations, if any, under the Code and the DIP Orders, the Lender Group shall not in any way or manner be liable or responsible for: (i) the safekeeping of the Collateral, (ii) any loss or damage thereto occurring or arising in any manner or fashion from any cause, (iii) any diminution in the value thereof, or (iv) any act or default of any carrier, warehouseman, bailee, forwarding agency, or other Person, and (b) all risk of loss, damage, or destruction of the Collateral shall be borne by the Loan Parties.

10.3 **Indemnification**. Each Borrower shall pay, indemnify, defend, and hold the Agent-Related Persons, the Lender-Related Persons, and each Participant (each, an "Indemnified Person") harmless (to the fullest extent permitted by law) from and against any and all claims, demands, suits, actions, investigations, proceedings, liabilities, fines, costs, penalties, and damages, and all reasonable fees and disbursements of attorneys, experts, or consultants and all other costs and expenses actually incurred in connection therewith or in connection with the enforcement of this indemnification (as and when they are incurred and irrespective of whether suit is brought), at any time asserted against, imposed upon, or incurred by any of them (a) in connection with or as a result of or related to the execution and delivery, enforcement, performance, or administration (including any restructuring or workout with respect hereto) of this Agreement, any of the other Loan Documents, the DIP Orders, the Chapter 11 Cases, the use of Cash Collateral, the Prepetition Facility Obligations, or the transactions contemplated hereby or thereby or the monitoring of Borrowers' and their Subsidiaries' compliance with the terms of the Loan Documents and the DIP Orders; provided, that the indemnification in this clause (a) shall not extend to (i) disputes solely between or among the Lenders that do not involve any acts or omissions of any Loan Party, or (ii) disputes solely between or among the Lenders and their respective Affiliates that do not involve any acts or omissions of any Loan Party; it being understood and agreed that the indemnification in this clause (a) shall extend to Agent (but not the Lenders unless the dispute involves an act or omission of a Loan Party) relative to disputes between or among Agent on the one hand, and one or more Lenders, or one or more of their Affiliates, on the other hand, or (iii) any claims for Taxes, which shall be governed by Section 16, other than Taxes which relate primarily to non-Tax claims, (b) with respect to any actual or prospective investigation, litigation, contested matter, adversary proceeding, or other proceeding related to this Agreement, any other Loan Document, the DIP Orders, the Chapter 11 Cases, the making of any Loans hereunder, the use of the proceeds of the Loans provided hereunder, or the use of Cash Collateral (whether brought by a third party, a Borrower, any other Loan Party, any committee appointed in the Chapter 11 Cases or any other party in interest, and irrespective of whether any Indemnified Person is a party thereto), or any act, omission, event, or circumstance in any manner related thereto, and (c) in connection with or

arising out of any presence or release of Hazardous Materials at, on, under, to or from any assets or properties owned, leased or operated by any Loan Party or any of its Subsidiaries or any Environmental Actions, Environmental Liabilities or Remedial Actions related in any way to any such assets or properties of any Loan Party or any of its Subsidiaries (each and all of the foregoing, the "Indemnified Liabilities"). The foregoing to the contrary notwithstanding, no Borrower shall have any obligation to any Indemnified Person under this Section 10.3 with respect to any Indemnified Liability that a court of competent jurisdiction finally determines to have resulted from the gross negligence or willful misconduct of such Indemnified Person or its officers, directors, employees, attorneys or agents. This provision shall survive the termination of this Agreement and the repayment in full of the Obligations. If any Indemnified Person makes any payment to any other Indemnified Person with respect to an Indemnified Liability as to which Borrowers were required to indemnify the Indemnified Person receiving such payment, the Indemnified Person making such payment is entitled to be indemnified and reimbursed by Borrowers with respect thereto. **WITHOUT LIMITATION, THE FOREGOING INDEMNITY SHALL APPLY TO EACH INDEMNIFIED PERSON WITH RESPECT TO INDEMNIFIED LIABILITIES WHICH IN WHOLE OR IN PART ARE CAUSED BY OR ARISE OUT OF ANY NEGLIGENT ACT OR OMISSION OF SUCH INDEMNIFIED PERSON OR OF ANY OTHER PERSON.**

11. **NOTICES**.

Unless otherwise provided in this Agreement, all notices or demands relating to this Agreement or any other Loan Document shall be in writing and (except for financial statements and other informational documents which may be sent by first-class mail, postage prepaid or delivered through Agent's electronic platform or portal) shall be personally delivered or sent by registered or certified mail (postage prepaid, return receipt requested), overnight courier, electronic mail (at such email addresses as a party may designate in accordance herewith), or telefacsimile. In the case of notices or demands to any Loan Party or Agent, as the case may be, they shall be sent to the respective address set forth below:

If to any Loan Party:

Republic National Distributing Company, LLC
4300 Wildwood Way
Suite 200
Atlanta, Georgia 30339
Attn: Dennis Bashuk
Facsimile No.: (404) 691-0364
Email: dennis.bashuk@rndc-usa.com

With a copy to:

Kirkland & Ellis LLP
609 Main Street
Houston, TX 77002
Attn: Andrew C.R. Veit, P.C.
Email: andrew.veit@kirkland.com

If the Agent:

Wells Fargo Bank, National Association
1100 Abernathy Road, Suite 1600,
Atlanta, GA 30328
Attn: Portfolio Manager
Facsimile: (866) 918-6213
Email: john.williammee@wellsfargo.com

Any party hereto may change the address at which they are to receive notices hereunder, by notice in writing in the foregoing manner given to the other party. All notices or demands sent in accordance with this Section 11 shall be deemed received on the earlier of the date of actual receipt or three Business Days after the deposit thereof in the mail; provided, that (a) notices sent by overnight courier service shall be deemed to have been given when received, (b) notices by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient) and (c) notices by electronic mail shall be deemed received upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "return receipt requested" function, as available, return email or other written acknowledgment).

12. **CHOICE OF LAW AND VENUE; JURY TRIAL WAIVER; JUDICIAL REFERENCE PROVISION**.

(a) **THE VALIDITY OF THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (UNLESS EXPRESSLY PROVIDED TO THE CONTRARY IN ANOTHER LOAN DOCUMENT IN RESPECT OF SUCH OTHER LOAN DOCUMENT), THE CONSTRUCTION, INTERPRETATION, AND ENFORCEMENT HEREOF AND THEREOF, THE RIGHTS OF THE PARTIES HERETO AND THERETO WITH RESPECT TO ALL MATTERS ARISING HEREUNDER OR THEREUNDER OR RELATED HERETO OR THERETO, AND ANY CLAIMS, CONTROVERSIES OR DISPUTES ARISING HEREUNDER OR THEREUNDER OR RELATED HERETO OR THERETO SHALL BE DETERMINED UNDER, GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK; PROVIDED THAT, TO THE EXTENT REQUIRED BY THE BANKRUPTCY CODE OR THE DIP ORDERS, THE CHAPTER 11 CASES AND THE EXERCISE OF RIGHTS AND REMEDIES IN CONNECTION THEREWITH SHALL BE SUBJECT TO THE JURISDICTION OF THE BANKRUPTCY COURT.**

(b) **SUBJECT TO THE JURISDICTION OF THE BANKRUPTCY COURT AND THE TERMS OF THE DIP ORDERS, THE PARTIES AGREE THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS SHALL BE TRIED AND LITIGATED ONLY IN THE STATE AND, TO THE EXTENT PERMITTED BY APPLICABLE LAW, FEDERAL COURTS LOCATED IN THE COUNTY OF NEW YORK, STATE OF NEW YORK; PROVIDED, THAT ANY SUIT SEEKING ENFORCEMENT AGAINST ANY COLLATERAL OR OTHER PROPERTY MAY BE BROUGHT, AT AGENT'S OPTION, IN THE COURTS OF ANY JURISDICTION WHERE AGENT ELECTS TO BRING SUCH ACTION OR WHERE SUCH COLLATERAL OR OTHER PROPERTY MAY BE FOUND. EACH BORROWER AND EACH MEMBER OF THE LENDER GROUP WAIVE, TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, ANY RIGHT EACH MAY HAVE TO ASSERT THE DOCTRINE OF FORUM NON CONVENIENS OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS SECTION 12(b).**

(c) **TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EACH BORROWER AND EACH MEMBER OF THE LENDER GROUP HEREBY WAIVE THEIR RESPECTIVE RIGHTS, IF ANY, TO A JURY TRIAL OF ANY CLAIM, CONTROVERSY, DISPUTE OR CAUSE OF ACTION DIRECTLY OR INDIRECTLY BASED UPON OR ARISING OUT OF ANY OF THE LOAN DOCUMENTS, THE DIP ORDERS OR ANY OF THE TRANSACTIONS CONTEMPLATED THEREIN, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS (EACH A "CLAIM"). EACH BORROWER AND EACH MEMBER OF**

THE LENDER GROUP REPRESENT THAT EACH HAS REVIEWED THIS WAIVER AND EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. IN THE EVENT OF LITIGATION, A COPY OF THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

(d) **SUBJECT TO THE JURISDICTION OF THE BANKRUPTCY COURT AND THE TERMS OF THE DIP ORDERS, EACH BORROWER HEREBY IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS LOCATED IN THE COUNTY OF NEW YORK AND THE STATE OF NEW YORK, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO ANY LOAN DOCUMENTS, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT AGENT MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST ANY LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.**

(e) **NO CLAIM MAY BE MADE BY ANY LOAN PARTY AGAINST AGENT, ANY LENDER, OR ANY AFFILIATE, DIRECTOR, OFFICER, EMPLOYEE, COUNSEL, REPRESENTATIVE, AGENT, OR ATTORNEY-IN-FACT OF ANY OF THEM FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES OR LOSSES IN RESPECT OF ANY CLAIM FOR BREACH OF CONTRACT OR ANY OTHER THEORY OF LIABILITY ARISING OUT OF OR RELATED TO THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT, ANY OTHER LOAN DOCUMENT OR THE DIP ORDERS, OR ANY ACT, OMISSION, OR EVENT OCCURRING IN CONNECTION THEREWITH, AND EACH LOAN PARTY HEREBY WAIVES, RELEASES, AND AGREES NOT TO SUE UPON ANY CLAIM FOR SUCH DAMAGES, WHETHER OR NOT ACCRUED AND WHETHER OR NOT KNOWN OR SUSPECTED TO EXIST IN ITS FAVOR.**

(f) **IN THE EVENT ANY LEGAL PROCEEDING IS FILED IN A COURT OF THE STATE OF CALIFORNIA (THE "COURT") BY OR AGAINST ANY PARTY HERETO IN CONNECTION WITH ANY CLAIM AND THE WAIVER SET FORTH IN CLAUSE (C) ABOVE IS NOT ENFORCEABLE IN SUCH PROCEEDING, THE PARTIES HERETO AGREE AS FOLLOWS:**

(i) **WITH THE EXCEPTION OF THE MATTERS SPECIFIED IN SUBCLAUSE (ii) BELOW, ANY CLAIM SHALL BE DETERMINED BY A GENERAL REFERENCE PROCEEDING IN ACCORDANCE WITH THE PROVISIONS OF CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 638 THROUGH 645.1. THE PARTIES INTEND THIS GENERAL REFERENCE AGREEMENT TO BE SPECIFICALLY ENFORCEABLE. VENUE FOR THE REFERENCE PROCEEDING SHALL BE IN THE COUNTY OF LOS ANGELES, CALIFORNIA.**

(ii) **THE FOLLOWING MATTERS SHALL NOT BE SUBJECT TO A GENERAL REFERENCE PROCEEDING: (A) NON-JUDICIAL FORECLOSURE OF ANY SECURITY INTERESTS IN REAL OR PERSONAL PROPERTY, (B) EXERCISE OF SELF-HELP REMEDIES (INCLUDING SET-OFF OR RECOUPMENT), (C) APPOINTMENT OF A**

RECEIVER, AND (D) TEMPORARY, PROVISIONAL, OR ANCILLARY REMEDIES (INCLUDING WRITS OF ATTACHMENT, WRITS OF POSSESSION, TEMPORARY RESTRAINING ORDERS, OR PRELIMINARY INJUNCTIONS). THIS AGREEMENT DOES NOT LIMIT THE RIGHT OF ANY PARTY TO EXERCISE OR OPPOSE ANY OF THE RIGHTS AND REMEDIES DESCRIBED IN CLAUSES (A) - (D) AND ANY SUCH EXERCISE OR OPPOSITION DOES NOT WAIVE THE RIGHT OF ANY PARTY TO PARTICIPATE IN A REFERENCE PROCEEDING PURSUANT TO THIS AGREEMENT WITH RESPECT TO ANY OTHER MATTER.

(iii) **UPON THE WRITTEN REQUEST OF ANY PARTY, THE PARTIES SHALL SELECT A SINGLE REFEREE, WHO SHALL BE A RETIRED JUDGE OR JUSTICE. IF THE PARTIES DO NOT AGREE UPON A REFEREE WITHIN TEN DAYS OF SUCH WRITTEN REQUEST, THEN, ANY PARTY SHALL HAVE THE RIGHT TO REQUEST THE COURT TO APPOINT A REFEREE PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 640(B). THE REFEREE SHALL BE APPOINTED TO SIT WITH ALL OF THE POWERS PROVIDED BY LAW. PENDING APPOINTMENT OF THE REFEREE, THE COURT SHALL HAVE THE POWER TO ISSUE TEMPORARY OR PROVISIONAL REMEDIES.**

(iv) **EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE REFEREE SHALL DETERMINE THE MANNER IN WHICH THE REFERENCE PROCEEDING IS CONDUCTED INCLUDING THE TIME AND PLACE OF HEARINGS, THE ORDER OF PRESENTATION OF EVIDENCE, AND ALL OTHER QUESTIONS THAT ARISE WITH RESPECT TO THE COURSE OF THE REFERENCE PROCEEDING. ALL PROCEEDINGS AND HEARINGS CONDUCTED BEFORE THE REFEREE, EXCEPT FOR TRIAL, SHALL BE CONDUCTED WITHOUT A COURT REPORTER, EXCEPT WHEN ANY PARTY SO REQUESTS A COURT REPORTER AND A TRANSCRIPT IS ORDERED, A COURT REPORTER SHALL BE USED AND THE REFEREE SHALL BE PROVIDED A COURTESY COPY OF THE TRANSCRIPT. THE PARTY MAKING SUCH REQUEST SHALL HAVE THE OBLIGATION TO ARRANGE FOR AND PAY THE COSTS OF THE COURT REPORTER; PROVIDED, THAT SUCH COSTS, ALONG WITH THE REFEREE'S FEES, SHALL ULTIMATELY BE BORNE BY THE PARTY WHO DOES NOT PREVAIL, AS DETERMINED BY THE REFEREE. THE REFEREE MAY REQUIRE ONE OR MORE PREHEARING CONFERENCES. THE PARTIES HERETO SHALL BE ENTITLED TO DISCOVERY, AND THE REFEREE SHALL OVERSEE DISCOVERY IN ACCORDANCE WITH THE RULES OF DISCOVERY, AND SHALL ENFORCE ALL DISCOVERY ORDERS IN THE SAME MANNER AS ANY TRIAL COURT JUDGE IN PROCEEDINGS AT LAW IN THE STATE OF CALIFORNIA**.

(v) **THE REFEREE MAY REQUIRE ONE OR MORE PREHEARING CONFERENCES. THE PARTIES HERETO SHALL BE ENTITLED TO DISCOVERY, AND THE REFEREE SHALL OVERSEE DISCOVERY IN ACCORDANCE WITH THE RULES OF DISCOVERY, AND SHALL ENFORCE ALL DISCOVERY ORDERS IN THE SAME MANNER AS ANY TRIAL COURT JUDGE IN PROCEEDINGS AT LAW IN THE STATE OF CALIFORNIA.**

(vi) **THE REFEREE SHALL APPLY THE RULES OF EVIDENCE APPLICABLE TO PROCEEDINGS AT LAW IN THE STATE OF CALIFORNIA AND SHALL DETERMINE ALL ISSUES IN ACCORDANCE WITH CALIFORNIA SUBSTANTIVE AND PROCEDURAL LAW. THE REFEREE SHALL BE EMPOWERED TO ENTER EQUITABLE AS WELL AS LEGAL RELIEF AND RULE ON ANY MOTION WHICH WOULD BE AUTHORIZED**

IN A TRIAL, INCLUDING MOTIONS FOR DEFAULT JUDGMENT OR SUMMARY JUDGMENT. THE REFEREE SHALL REPORT HIS OR HER DECISION, WHICH REPORT SHALL ALSO INCLUDE FINDINGS OF FACT AND CONCLUSIONS OF LAW. THE REFEREE SHALL ISSUE A DECISION AND PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE, SECTION 644, THE REFEREE'S DECISION SHALL BE ENTERED BY THE COURT AS A JUDGMENT IN THE SAME MANNER AS IF THE ACTION HAD BEEN TRIED BY THE COURT. THE FINAL JUDGMENT OR ORDER FROM ANY APPEALABLE DECISION OR ORDER ENTERED BY THE REFEREE SHALL BE FULLY APPEALABLE AS IF IT HAS BEEN ENTERED BY THE COURT.

(vii) **THE PARTIES RECOGNIZE AND AGREE THAT ALL CLAIMS RESOLVED IN A GENERAL REFERENCE PROCEEDING PURSUANT HERETO WILL BE DECIDED BY A REFEREE AND NOT BY A JURY. AFTER CONSULTING (OR HAVING HAD THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF THEIR OWN CHOICE, EACH PARTY HERETO KNOWINGLY AND VOLUNTARILY AND FOR THEIR MUTUAL BENEFIT AGREES THAT THIS REFERENCE PROVISION SHALL APPLY TO ANY DISPUTE BETWEEN THEM THAT ARISES OUT OF OR IS RELATED TO THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS.**

13. **ASSIGNMENTS AND PARTICIPATIONS; SUCCESSORS**.

13.1 **Assignments and Participations**.

(a) (i) Subject to the conditions set forth in clause (a)(ii) below, any Lender may assign and delegate all or any portion of its rights and duties under the Loan Documents (including the Obligations owed to it and its Commitments) to one or more assignees so long as such prospective assignee is an Eligible Transferee (each, an "Assignee"), with the prior written consent (such consent not be unreasonably withheld or delayed) of:

(A) Borrowers; provided, that no consent of Borrowers shall be required (1) if a Default or Event of Default has occurred and is continuing or (2) in connection with an assignment to a Person that is a Lender or an Affiliate (other than natural persons) of a Lender; provided further, that Borrowers shall be deemed to have consented to a proposed assignment unless they object thereto by written notice to Agent within five Business Days after having received notice thereof; and

(B) Agent.

(ii) Assignments shall be subject to the following additional conditions:

(A) no assignment may be made to a natural person,

(B) no assignment may be made to a Loan Party or an Affiliate of a Loan Party,

(C) the amount of the Commitments and the other rights and obligations of the assigning Lender hereunder and under the other Loan Documents subject to each such assignment (determined as of the date the Assignment and Acceptance with respect to such assignment is delivered to Agent) shall be in a minimum amount (unless waived by Agent) of $10,000,000 (except such minimum amount shall not apply to (I) an assignment or delegation by any Lender to any other Lender, an Affiliate of any Lender, or a Related Fund of such Lender, or (II) a group of new Lenders, each of which is

an Affiliate of each other or a Related Fund of such new Lender to the extent that the aggregate amount to be assigned to all such new Lenders is at least $10,000,000);

(D) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the DIP Revolving Facility and/or the DIP Term Loan Facility being assigned;

(E) the parties to each assignment shall execute and deliver to Agent an Assignment and Acceptance; provided, that Borrowers and Agent may continue to deal solely and directly with the assigning Lender in connection with the interest so assigned to an Assignee until written notice of such assignment, together with payment instructions, addresses, and related information with respect to the Assignee, have been given to Borrowers and Agent by such Lender and the Assignee;

(F) unless waived by Agent, the assigning Lender or Assignee has paid to Agent, for Agent's separate account, a processing fee in the amount of $3,500; and

(G) the Assignee, if it is not a Lender, shall deliver to Agent an Administrative Questionnaire in a form approved by Agent; and (the "Administrative Questionnaire").

(b) From and after the date that Agent receives the executed Assignment and Acceptance and, if applicable, payment of the required processing fee, (i) the Assignee thereunder shall be a party hereto and, to the extent that rights and obligations hereunder have been assigned to it pursuant to such Assignment and Acceptance, shall be a "Lender" and shall have the rights and obligations of a Lender under the Loan Documents, and (ii) the assigning Lender shall, to the extent that rights and obligations hereunder and under the other Loan Documents have been assigned by it pursuant to such Assignment and Acceptance, relinquish its rights (except with respect to Section 10.3) and be released from any future obligations under this Agreement (and in the case of an Assignment and Acceptance covering all or the remaining portion of an assigning Lender's rights and obligations under this Agreement and the other Loan Documents, such Lender shall cease to be a party hereto and thereto); provided, that nothing contained herein shall release any assigning Lender from obligations that survive the termination of this Agreement, including such assigning Lender's obligations under Section 15 and Section 17.9(a).

(c) By executing and delivering an Assignment and Acceptance, the assigning Lender thereunder and the Assignee thereunder confirm to and agree with each other and the other parties hereto as follows: (i) other than as provided in such Assignment and Acceptance, such assigning Lender makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with this Agreement or the execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement or any other Loan Document furnished pursuant hereto, (ii) such assigning Lender makes no representation or warranty and assumes no responsibility with respect to the financial condition of any Loan Party or the performance or observance by any Loan Party of any of its obligations under this Agreement or any other Loan Document furnished pursuant hereto, (iii) such Assignee confirms that it has received a copy of this Agreement, together with such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into such Assignment and Acceptance, (iv) such Assignee will, independently and without reliance upon Agent, such assigning Lender or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement, (v) such Assignee appoints and authorizes Agent to take such actions and to exercise such powers under this Agreement and the other Loan Documents as are delegated to Agent by the terms hereof and thereof, together with such powers as are reasonably incidental thereto, and (vi) such Assignee agrees that it will perform all of the obligations which by the terms of this Agreement are required to be performed by it as a Lender.

(d) Immediately upon Agent's receipt of the required processing fee, if applicable, and delivery of notice to the assigning Lender pursuant to Section 13.1(b), this Agreement shall be deemed to be amended to the extent, but only to the extent, necessary to reflect the addition of the Assignee and the resulting adjustment of the Commitments arising therefrom. The Commitment allocated to each Assignee shall reduce such Commitments of the assigning Lender pro tanto.

(e) Any Lender may at any time sell to one or more commercial banks, financial institutions, or other Persons (a "Participant") participating interests in all or any portion of its Obligations, its Commitment, and the other rights and interests of that Lender (the "Originating Lender") hereunder and under the other Loan Documents; provided, that (i) the Originating Lender shall remain a "Lender" for all purposes of this Agreement and the other Loan Documents and the Participant receiving the participating interest in the Obligations, the Commitments, and the other rights and interests of the Originating Lender hereunder shall not constitute a "Lender" hereunder or under the other Loan Documents and the Originating Lender's obligations under this Agreement shall remain unchanged, (ii) the Originating Lender shall remain solely responsible for the performance of such obligations, (iii) Borrowers, Agent, and the Lenders shall continue to deal solely and directly with the Originating Lender in connection with the Originating Lender's rights and obligations under this Agreement and the other Loan Documents, (iv) no Lender shall transfer or grant any participating interest under which the Participant has the right to approve any amendment to, or any consent or waiver with respect to, this Agreement or any other Loan Document, except to the extent such amendment to, or consent or waiver with respect to this Agreement or of any other Loan Document would (A) extend the final maturity date of the Obligations hereunder in which such Participant is participating, (B) reduce the interest rate applicable to the Obligations hereunder in which such Participant is participating, (C) release all or substantially all of the Collateral or guaranties (except to the extent expressly provided herein, in any of the Loan Documents or in the DIP Orders) supporting the Obligations hereunder in which such Participant is participating, (D) postpone the payment of, or reduce the amount of, the interest or fees payable to such Participant through such Lender (other than a waiver of default interest), or (E) decrease the amount or postpone the due dates of scheduled principal repayments or prepayments or premiums payable to such Participant through such Lender, (v) no participation shall be sold to a natural person, (vi) no participation shall be sold to a Loan Party or an Affiliate of a Loan Party, and (vii) all amounts payable by Borrowers hereunder shall be determined as if such Lender had not sold such participation, except that, if amounts outstanding under this Agreement are due and unpaid, or shall have been declared or shall have become due and payable upon the occurrence of an Event of Default, each Participant shall be deemed to have the right of set off in respect of its participating interest in amounts owing under this Agreement to the same extent as if the amount of its participating interest were owing directly to it as a Lender under this Agreement. The rights of any Participant only shall be derivative through the Originating Lender with whom such Participant participates and no Participant shall have any rights under this Agreement or the other Loan Documents or any direct rights as to the other Lenders, Agent, Borrowers, the Collateral, or otherwise in respect of the Obligations. No Participant shall have the right to participate directly in the making of decisions by the Lenders among themselves.

(f) In connection with any such assignment or participation or proposed assignment or participation or any grant of a security interest in, or pledge of, its rights under and interest in this Agreement, a Lender may, subject to the provisions of Section 17.9, disclose all documents and information which it now or hereafter may have relating to any Loan Party and its Subsidiaries and their respective businesses.

(g) Any other provision in this Agreement notwithstanding, any Lender may at any time create a security interest in, or pledge, all or any portion of its rights under and interest in this Agreement to secure obligations of such Lender, including any pledge in favor of any Federal Reserve Bank in accordance with Regulation A of the Federal Reserve Bank or U.S. Treasury Regulation 31 CFR §203.24, and such Federal Reserve Bank may enforce such pledge or security interest in any manner permitted under

applicable law; provided, that no such pledge shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(h) Agent (as a non-fiduciary agent on behalf of Borrowers) shall maintain, or cause to be maintained, a register (the "Register") on which it enters the name and address of each Lender as the registered owner of each Loan (and the principal amount thereof and stated interest thereon) held by such Lender (each, a "Registered Loan"). Other than in connection with an assignment by a Lender of all or any portion of its portion of a Loan to an Affiliate of such Lender or a Related Fund of such Lender, (i) a Registered Loan (and the registered note, if any, evidencing the same) may be assigned or sold in whole or in part only by registration of such assignment or sale on the Register (and each registered note shall expressly so provide) and (ii) any assignment or sale of all or part of such Registered Loan (and the registered note, if any, evidencing the same) may be effected only by registration of such assignment or sale on the Register, together with the surrender of the registered note, if any, evidencing the same duly endorsed by (or accompanied by a written instrument of assignment or sale duly executed by) the holder of such registered note, whereupon, at the request of the designated assignee(s) or transferee(s), one or more new registered notes in the same aggregate principal amount shall be issued to the designated assignee(s) or transferee(s). Prior to the registration of assignment or sale of any Registered Loan (and the registered note, if any evidencing the same), Borrowers shall treat the Person in whose name such Registered Loan (and the registered note, if any, evidencing the same) is registered as the owner thereof for the purpose of receiving all payments thereon and for all other purposes, notwithstanding notice to the contrary. In the case of any assignment by a Lender of all or any portion of its Loans to an Affiliate of such Lender or a Related Fund of such Lender, and which assignment is not recorded in the Register, the assigning Lender, on behalf of Borrowers, shall maintain a register comparable to the Register.

(i) In the event that a Lender sells participations in the Registered Loan, such Lender, as a non-fiduciary agent on behalf of Borrowers, shall maintain (or cause to be maintained) a register on which it enters the name of all participants in the Registered Loans held by it (and the principal amount (and stated interest thereon) of the portion of such Registered Loans that is subject to such participations) (the "Participant Register"). A Registered Loan (and the registered note, if any, evidencing the same) may be participated in whole or in part only by registration of such participation on the Participant Register (and each registered note shall expressly so provide). Any participation of such Registered Loan (and the registered note, if any, evidencing the same) may be effected only by the registration of such participation on the Participant Register. No Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, Agent (in its capacity as Agent) shall have no responsibility for maintaining a Participant Register.

(j) Agent shall make a copy of the Register (and each Lender shall make a copy of its Participant Register to the extent it has one) available for review by Borrowers from time to time as Borrowers may reasonably request.

13.2 **Successors**. This Agreement shall bind and inure to the benefit of the respective successors and permitted assigns of each of the parties; provided, that no Borrower may assign this Agreement or any rights or duties hereunder without the Required Lenders' prior written consent and any prohibited assignment shall be absolutely void ab initio. No consent to assignment by the Required Lenders shall release any Borrower from its Obligations. A Lender may assign this Agreement and the other Loan

Documents and its rights and duties hereunder and thereunder pursuant to Section 13.1 and, except as expressly required pursuant to Section 13.1, no consent or approval by any Borrower is required in connection with any such assignment.

14. **AMENDMENTS; WAIVERS**.

14.1 **Amendments and Waivers**.

(a) No amendment, waiver or other modification of any provision of this Agreement or any other Loan Document, other than the Fee Letter, and no consent with respect to any departure by any Loan Party therefrom, shall be effective unless the same shall be in writing and signed by the Required Lenders, or by Agent at the written request of the Required Lenders, and the Loan Parties that are party thereto, and then any such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided that no such waiver, amendment or consent shall, unless in writing and signed by all of the Lenders directly affected thereby and all of the Loan Parties that are party thereto, do any of the following:

(i) increase the amount of, or extend the expiration date of, any DIP Revolving Commitment of any Lender;

(ii) postpone or delay any date fixed by this Agreement or any other Loan Document for any payment of principal, interest, fees or other amounts due hereunder or under any other Loan Document;

(iii) reduce the principal of, or the rate of interest on, any Loan or other extension of credit hereunder, or reduce any fees or other amounts payable hereunder or under any other Loan Document, except in connection with the waiver of the applicability of Section 2.6(c), which waiver shall be effective with the written consent of the Required Lenders;

(iv) amend, modify or eliminate this Section 14.1 or any provision of this Agreement providing for consent or other action by all Lenders or all directly affected Lenders;

(v) amend, modify or eliminate Section 3.1;

(vi) amend, modify or eliminate Section 15.11;

(vii) other than as permitted by Section 15.11, clause (xi) below or the Plan, release or contractually subordinate the Obligations or Agent's Lien in and to all or substantially all of the Collateral;

(viii) amend, modify or eliminate the definitions of "Required Lenders" or "Pro Rata Share" or any other provision of any Loan Document specifying the number or percentage of Lenders required to waive, amend or modify any rights thereunder;

(ix) other than in connection with a merger, liquidation, dissolution or sale expressly permitted by the terms hereof, the other Loan Documents or the DIP Orders, release any Borrower or Guarantor from any material obligation under the Loan Documents or consent to the assignment or transfer by any Borrower or Guarantor of any of its rights or duties under this Agreement or the other Loan Documents;

(x) amend, modify or eliminate any of the provisions of Section 2.4, including the priority of application of cash proceeds to the DIP Revolving Loans before the DIP Term Loans, without the consent of the Agent and the Required Lenders; provided, that, notwithstanding the foregoing, (x) no amendment to Section 2.4 shall amend the priority of payments as among the DIP Term Loans without the consent of the adversely affected DIP Term Loan Lenders and (y) no amendment shall provide that any new Indebtedness for borrowed money incurred under this Agreement has payment priority senior to the DIP Revolving Loans pursuant to Section 2.4 unless all DIP Revolving Lenders have been provided a reasonable opportunity to provide their pro rata portion of such new Indebtedness;

(xi) at any time that any Real Property is included in the Collateral, add, increase, renew or extend any Loan or Commitment hereunder until the completion of flood due diligence, documentation and coverage as required by the Flood Laws or as otherwise satisfactory to all Lenders; or

(xii) amend, modify or eliminate any of the provisions of Section 13.1 with respect to assignments to, or participations with, Persons who are Loan Parties or Affiliates of a Loan Party.

(b) [Reserved];

(c) No amendment, waiver, modification, elimination, or consent shall amend, modify, or waive any provision of this Agreement or the other Loan Documents pertaining to Agent, or any other rights or duties of Agent under this Agreement or the other Loan Documents, without the written consent of Agent, Borrowers, and the Required Lenders; and

(d) Anything in this Section 14.1 to the contrary notwithstanding, (i) any amendment, modification, elimination, waiver, consent, termination, or release of, or with respect to, any provision of this Agreement or any other Loan Document that relates only to the relationship of the Lender Group among themselves, and that does not affect the rights or obligations of any Loan Party, shall not require consent by or the agreement of any Loan Party, (ii) any amendment, waiver, modification, elimination, or consent of or with respect to any provision of this Agreement or any other Loan Document may be entered into without the consent of, or over the objection of, any Defaulting Lender, (iii) any amendment contemplated by Section 2.12(c) of this Agreement in connection with a Benchmark Transition Event shall be effective as contemplated by such Section 2.12(c) hereof; and (iv) any amendment contemplated by Section 2.6(g) of this Agreement in connection with the use or administration of Adjusted Daily Simple SOFR shall be effective as contemplated by such Section 2.6(g).

14.2 **Replacement of Certain Lenders**.

(a) If (i) any action to be taken by the Lender Group or Agent hereunder requires the consent, authorization, or agreement of all Lenders or all Lenders affected thereby and if such action has received the consent, authorization, or agreement of the Required Lenders but not of all Lenders or all Lenders affected thereby, or (ii) any Lender makes a claim for compensation under Section 16, then Borrowers or Agent, upon at least five Business Days prior irrevocable notice, may permanently replace any Lender that failed to give its consent, authorization, or agreement (a "Non-Consenting Lender") or any Lender that made a claim for compensation (a "Tax Lender") with one or more Replacement Lenders, and the Non-Consenting Lender or Tax Lender, as applicable, shall have no right to refuse to be replaced hereunder. Such notice to replace the Non-Consenting Lender or Tax Lender, as applicable, shall specify an effective date for such replacement, which date shall not be later than 15 Business Days after the date such notice is given.

(b) Prior to the effective date of such replacement, the Non-Consenting Lender or Tax Lender, as applicable, and each Replacement Lender shall execute and deliver an Assignment and

Acceptance, subject only to the Non-Consenting Lender or Tax Lender, as applicable, being repaid in full its share of the outstanding Obligations (without any premium or penalty of any kind whatsoever, but including all interest, fees and other amounts that may be due and payable in respect thereof). If the Non-Consenting Lender or Tax Lender, as applicable, shall refuse or fail to execute and deliver any such Assignment and Acceptance prior to the effective date of such replacement, Agent may, but shall not be required to, execute and deliver such Assignment and Acceptance in the name of and on behalf of the Non-Consenting Lender or Tax Lender, as applicable, and irrespective of whether Agent executes and delivers such Assignment and Acceptance, the Non-Consenting Lender or Tax Lender, as applicable, shall be deemed to have executed and delivered such Assignment and Acceptance. The replacement of any Non-Consenting Lender or Tax Lender, as applicable, shall be made in accordance with the terms of Section 13.1. Until such time as one or more Replacement Lenders shall have acquired all of the Obligations, the Commitments, and the other rights and obligations of the Non-Consenting Lender or Tax Lender, as applicable, hereunder and under the other Loan Documents, the Non-Consenting Lender or Tax Lender, as applicable, shall remain obligated to make its Pro Rata Share of Loans.

14.3 **No Waivers; Cumulative Remedies**. No failure by Agent or any Lender to exercise any right, remedy, or option under this Agreement or any other Loan Document, or delay by Agent or any Lender in exercising the same, will operate as a waiver thereof. No waiver by Agent or any Lender will be effective unless it is in writing, and then only to the extent specifically stated. No waiver by Agent or any Lender on any occasion shall affect or diminish Agent's and each Lender's rights thereafter to require strict performance by Borrowers of any provision of this Agreement. Agent's and each Lender's rights under this Agreement and the other Loan Documents will be cumulative and not exclusive of any other right or remedy that Agent or any Lender may have.

15. AGENT; THE LENDER GROUP.

15.1 **Appointment and Authorization of Agent**. Each Lender hereby designates and appoints Wells Fargo as its agent under this Agreement and the other Loan Documents and each Lender hereby irrevocably authorizes (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to designate, appoint, and authorize) Agent to execute and deliver each of the other Loan Documents on its behalf and to take such other action on its behalf under the provisions of this Agreement and each other Loan Document and to exercise such powers and perform such duties as are expressly delegated to Agent by the terms of this Agreement or any other Loan Document, together with such powers as are reasonably incidental thereto. Agent agrees to act as agent for and on behalf of the Lenders (and the Bank Product Providers) on the conditions contained in this Section 15. Any provision to the contrary contained elsewhere in this Agreement or in any other Loan Document notwithstanding, Agent shall not have any duties or responsibilities, except those expressly set forth herein or in the other Loan Documents, nor shall Agent have or be deemed to have any fiduciary relationship with any Lender (or Bank Product Provider), and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against Agent. Without limiting the generality of the foregoing, the use of the term "agent" in this Agreement or the other Loan Documents with reference to Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead, such term is used merely as a matter of market custom, and is intended to create or reflect only a representative relationship between independent contracting parties. Each Lender hereby further authorizes (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to authorize) Agent to act as the secured party under each of the Loan Documents that create a Lien on any item of Collateral. Except as expressly otherwise provided in this Agreement, Agent shall have and may use its sole discretion with respect to exercising or refraining from exercising any discretionary rights or taking or refraining from taking any actions that Agent expressly is entitled to take or assert under or pursuant to this Agreement and the other Loan Documents. Without limiting the generality of the foregoing, or of any other provision of the Loan

Documents that provides rights or powers to Agent, Lenders agree that Agent shall have the right to exercise the following powers as long as this Agreement remains in effect: (a) maintain, in accordance with its customary business practices, ledgers and records reflecting the status of the Obligations, the Collateral, payments and proceeds of Collateral, and related matters, (b) execute or file any and all financing or similar statements or notices, amendments, renewals, supplements, documents, instruments, proofs of claim, notices and other written agreements with respect to the Loan Documents or the DIP Orders, or to take any other action with respect to any Collateral, the Loan Documents or the DIP Orders which may be necessary to perfect, and maintain perfected, the security interests and Liens upon Collateral pursuant to the Loan Documents and the DIP Orders, (c) make DIP Revolving Loans, for itself or on behalf of Lenders, as provided in the Loan Documents, (d) exclusively receive, apply, and distribute payments and proceeds of the Collateral as provided in the Loan Documents and the DIP Orders, (e) open and maintain such bank accounts and cash management arrangements as Agent deems necessary and appropriate in accordance with the Loan Documents and the DIP Orders for the foregoing purposes, (f) perform, exercise, and enforce any and all other rights and remedies of the Lender Group with respect to any Loan Party or its Subsidiaries, the Obligations, the Collateral, or otherwise related to any of same as provided in the Loan Documents and the DIP Orders, and (g) incur and pay such Lender Group Expenses as Agent may deem necessary or appropriate for the performance and fulfillment of its functions and powers pursuant to the Loan Documents and the DIP Orders.

15.2 **Delegation of Duties**. Agent may execute any of its duties under this Agreement or any other Loan Document by or through agents, employees or attorneys in fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. Agent shall not be responsible for the negligence or misconduct of any agent or attorney in fact that it selects as long as such selection was made without gross negligence or willful misconduct.

15.3 **Liability of Agent**. None of the Agent-Related Persons shall (a) be liable for any action taken or omitted to be taken by any of them under or in connection with this Agreement, any other Loan Document, the DIP Orders or the transactions contemplated hereby or thereby, except for its own gross negligence or willful misconduct, or (b) be responsible in any manner to any of the Lenders (or Bank Product Providers) for any recital, statement, representation or warranty made by any Loan Party or any of its Subsidiaries or Affiliates, or any officer or director thereof, contained in this Agreement, any other Loan Document, the DIP Orders, or in any certificate, report, statement or other document referred to or provided for in, or received by Agent under or in connection with, this Agreement, any other Loan Document or the DIP Orders, or the validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement, any other Loan Document or the DIP Orders, or for any failure of any Loan Party or its Subsidiaries or any other party to any Loan Document to perform its obligations hereunder or thereunder. No Agent-Related Person shall be under any obligation to any Lenders (or Bank Product Providers) to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement, any other Loan Document or the DIP Orders, or to inspect the books and records or properties of any Loan Party or its Subsidiaries. No Agent-Related Person shall have any liability to any Lender, any Loan Party or any of their respective Affiliates if any request for a Loan or other extension of credit was not authorized by the applicable Borrower. Agent shall not be required to take any action that, in its opinion or in the opinion of its counsel, may expose it to liability or that is contrary to any Loan Document, the DIP Orders or applicable law or regulation.

15.4 **Reliance by Agent**. Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, resolution, notice, consent, certificate, affidavit, letter, telegram, telefacsimile or other electronic method of transmission, telex or telephone message, statement or other document or conversation believed by it to be genuine and correct and to have been signed, sent, or made by the proper Person or Persons, and upon advice and statements of legal counsel (including counsel to Borrowers or counsel to any Lender), independent accountants and other experts selected by Agent. Agent shall be fully justified in

failing or refusing to take any action under this Agreement or any other Loan Document unless Agent shall first receive such advice or concurrence of the Lenders as it deems appropriate and until such instructions are received, Agent shall act, or refrain from acting, as it deems advisable. If Agent so requests, it shall first be indemnified to its reasonable satisfaction by the Lenders (and, if it so elects, the Bank Product Providers) against any and all liability and expense that may be incurred by it by reason of taking or continuing to take any such action. Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement or any other Loan Document in accordance with a request or consent of the Required Lenders and such request and any action taken or failure to act pursuant thereto shall be binding upon all of the Lenders (and Bank Product Providers).

15.5 **Notice of Default or Event of Default**. Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default, except with respect to defaults in the payment of principal, interest, fees, and expenses required to be paid to Agent for the account of the Lenders and, except with respect to Events of Default of which Agent has actual knowledge, unless Agent shall have received written notice from a Lender or Borrowers referring to this Agreement, describing such Default or Event of Default, and stating that such notice is a "notice of default." Agent promptly will notify the Lenders of its receipt of any such notice or of any Event of Default of which Agent has actual knowledge. If any Lender obtains actual knowledge of any Event of Default, such Lender promptly shall notify the other Lenders and Agent of such Event of Default. Each Lender shall be solely responsible for giving any notices to its Participants, if any. Subject to Section 15.4, Agent shall take such action with respect to such Default or Event of Default as may be requested by the Required Lenders in accordance with Section 9; provided, that unless and until Agent has received any such request, Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable.

15.6 **Credit Decision**. Each Lender (and Bank Product Provider) acknowledges that none of the Agent-Related Persons has made any representation or warranty to it, and that no act by Agent hereinafter taken, including any review of the affairs of any Loan Party and its Subsidiaries or Affiliates, shall be deemed to constitute any representation or warranty by any Agent-Related Person to any Lender (or Bank Product Provider). Each Lender represents (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to represent) to Agent that it has, independently and without reliance upon any Agent-Related Person and based on such due diligence, documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, prospects, operations, property, financial and other condition and creditworthiness of each Borrower or any other Person party to a Loan Document, and all applicable bank regulatory laws relating to the transactions contemplated hereby, and made its own decision to enter into this Agreement and to extend credit to Borrowers. Each Lender also represents (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to represent) that it will, independently and without reliance upon any Agent-Related Person and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Loan Documents, and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of each Borrower or any other Person party to a Loan Document. Except for notices, reports, and other documents expressly herein required to be furnished to the Lenders by Agent, Agent shall not have any duty or responsibility to provide any Lender (or Bank Product Provider) with any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of any Borrower or any other Person party to a Loan Document that may come into the possession of any of the Agent-Related Persons. Each Lender acknowledges (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to acknowledge) that Agent does not have any duty or responsibility, either initially or on a continuing basis (except to the extent, if any, that is expressly specified herein) to provide such Lender (or Bank Product Provider) with any credit or other information with respect to any Borrower,

its Affiliates or any of their respective business, legal, financial or other affairs, and irrespective of whether such information came into Agent's or its Affiliates' or representatives' possession before or after the date on which such Lender became a party to this Agreement (or such Bank Product Provider entered into a Bank Product Agreement).

15.7 **Costs and Expenses; Indemnification**. Agent may incur and pay Lender Group Expenses to the extent Agent reasonably deems necessary or appropriate for the performance and fulfillment of its functions, powers, and obligations pursuant to the Loan Documents and the DIP Orders, including court costs, attorneys' fees and expenses, fees and expenses of financial accountants, advisors, consultants, and appraisers, costs of collection by outside collection agencies, auctioneer fees and expenses, and costs of security guards or insurance premiums paid to maintain the Collateral, whether or not Borrowers are obligated to reimburse Agent or Lenders for such expenses pursuant to this Agreement or otherwise. Agent is authorized and directed to charge the Loan Account for any Lender Group Expenses and/or deduct and retain sufficient amounts from payments or proceeds of the Collateral received by Agent to reimburse Agent for such out-of-pocket costs and expenses prior to the distribution of any amounts to Lenders (or Bank Product Providers). In the event Agent is not reimbursed for such costs and expenses by the Loan Parties and their Subsidiaries, each Lender hereby agrees that it is and shall be obligated to pay to Agent such Lender's ratable share thereof. Whether or not the transactions contemplated hereby are consummated, each of the Lenders, on a ratable basis, shall indemnify and defend the Agent-Related Persons (to the extent not reimbursed by or on behalf of Borrowers and without limiting the obligation of Borrowers to do so) from and against any and all Indemnified Liabilities; provided, that no Lender shall be liable for the payment to any Agent-Related Person of any portion of such Indemnified Liabilities resulting solely from such Person's gross negligence or willful misconduct nor shall any Lender be liable for the obligations of any Defaulting Lender in failing to fund any Loan or other extension of credit hereunder. Without limitation of the foregoing, each Lender shall reimburse Agent upon demand for such Lender's ratable share of any costs or out of pocket expenses (including attorneys, accountants, advisors, and consultants fees and expenses) incurred by Agent in connection with the preparation, execution, delivery, administration, modification, amendment, or enforcement, whether through negotiations, legal proceedings or otherwise, of, or legal advice in respect of rights or responsibilities under, this Agreement, any other Loan Document or the DIP Orders to the extent that Agent is not reimbursed for such expenses by or on behalf of Borrowers. The undertaking in this Section shall survive the payment of all Obligations hereunder and the resignation or replacement of Agent.

15.8 **Agent in Individual Capacity**. Wells Fargo and its Affiliates may make loans to, issue letters of credit for the account of, accept deposits from, provide Bank Products to, acquire Equity Interests in, and generally engage in any kind of banking, trust, financial advisory, underwriting, or other business with any Loan Party and its Subsidiaries and Affiliates and any other Person party to any Loan Document as though Wells Fargo were not Agent hereunder, and, in each case, without notice to or consent of the other members of the Lender Group. The other members of the Lender Group acknowledge (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to acknowledge) that, pursuant to such activities, Wells Fargo or its Affiliates may receive information regarding a Loan Party or its Affiliates or any other Person party to any Loan Documents that is subject to confidentiality obligations in favor of such Loan Party or such other Person and that prohibit the disclosure of such information to the Lenders (or Bank Product Providers), and the Lenders acknowledge (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to acknowledge) that, in such circumstances (and in the absence of a waiver of such confidentiality obligations, which waiver Agent will use its reasonable best efforts to obtain), Agent shall not be under any obligation to provide such information to them. The terms "Lender" and "Lenders" include Wells Fargo in its individual capacity.

15.9 **Successor Agent**. Agent may resign as Agent upon 30 days (ten days if an Event of Default has occurred and is continuing) prior written notice to the Lenders (unless such notice is waived by the

Required Lenders) and Borrowers (unless such notice is waived by Borrowers or a Default or Event of Default has occurred and is continuing) and without any notice to the Bank Product Providers. If Agent resigns under this Agreement, the Required Lenders shall be entitled, with (so long as no Event of Default has occurred and is continuing) the consent of Borrowers (such consent not to be unreasonably withheld, delayed, or conditioned), appoint a successor Agent for the Lenders (and the Bank Product Providers). If no successor Agent is appointed prior to the effective date of the resignation of Agent, Agent may appoint, after consulting with the Lenders and Borrowers, a successor Agent. If Agent has materially breached or failed to perform any material provision of this Agreement or of applicable law, the Required Lenders may agree in writing to remove and replace Agent with a successor Agent from among the Lenders with, so long as no Event of Default has occurred and is continuing, the consent of Borrowers (such consent not to be unreasonably withheld, delayed, or conditioned). In any such event, upon the acceptance of its appointment as successor Agent hereunder, such successor Agent shall succeed to all the rights, powers, and duties of the retiring Agent and the term "Agent" shall mean such successor Agent and the retiring Agent's appointment, powers, and duties as Agent shall be terminated. After any retiring Agent's resignation hereunder as Agent, the provisions of this Section 15 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Agent under this Agreement. If no successor Agent has accepted appointment as Agent by the date which is 30 days following a retiring Agent's notice of resignation, the retiring Agent's resignation shall nevertheless thereupon become effective and the Lenders shall perform all of the duties of Agent hereunder until such time, if any, as the Lenders appoint a successor Agent as provided for above.

15.10 **Lender in Individual Capacity**. Any Lender and its respective Affiliates may make loans to, issue letters of credit for the account of, accept deposits from, provide Bank Products to, acquire Equity Interests in and generally engage in any kind of banking, trust, financial advisory, underwriting, or other business with any Loan Party and its Subsidiaries and Affiliates and any other Person party to any Loan Documents as though such Lender were not a Lender hereunder without notice to or consent of the other members of the Lender Group (or the Bank Product Providers). The other members of the Lender Group acknowledge (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to acknowledge) that, pursuant to such activities, such Lender and its respective Affiliates may receive information regarding a Loan Party or its Affiliates or any other Person party to any Loan Documents that is subject to confidentiality obligations in favor of such Loan Party or such other Person and that prohibit the disclosure of such information to the Lenders, and the Lenders acknowledge (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to acknowledge) that, in such circumstances (and in the absence of a waiver of such confidentiality obligations, which waiver such Lender will use its reasonable best efforts to obtain), such Lender shall not be under any obligation to provide such information to them.

15.11 **Collateral Matters**.

(a) The Lenders hereby irrevocably authorize (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to authorize) Agent to release any Lien on any Collateral (i) upon the termination of the Commitments and payment and satisfaction in full by the Loan Parties and their Subsidiaries of all of the Obligations, (ii) constituting property being sold or disposed of if a release is required or desirable in connection therewith and if Borrowers certify to Agent that the sale or disposition is permitted under Section 6.3 or the DIP Orders, and Agent may rely conclusively on any such certificate, without further inquiry, (iii) constituting property in which no Loan Party or any of its Subsidiaries owned any interest at the time Agent's Lien was granted nor at any time thereafter, (iv) constituting property leased or licensed to a Loan Party or its Subsidiaries under a lease or license that has expired or is terminated in a transaction permitted under this Agreement, or (v) in connection with a credit bid or purchase authorized under this Section 15.11 or the DIP Orders. The Loan Parties and the Lenders hereby irrevocably authorize (and by entering into a Bank Product Agreement, each Bank Product Provider

shall be deemed to authorize) Agent, based upon the instruction of the Required Lenders, to (A) consent to the sale of, credit bid, or purchase, either directly or indirectly through one or more entities, all or any portion of the Collateral at any sale thereof conducted under the provisions of the Bankruptcy Code, including Section 363 of the Bankruptcy Code, (B) credit bid or purchase, either directly or indirectly through one or more entities, all or any portion of the Collateral at any sale or other disposition thereof conducted under the provisions of the Code, including pursuant to Sections 9-610 or 9-620 of the Code, or (C) credit bid or purchase, either directly or indirectly through one or more entities, all or any portion of the Collateral at any other sale or foreclosure conducted or consented to by Agent in accordance with applicable law in any judicial action or proceeding or by the exercise of any legal or equitable remedy, in each case, subject to the DIP Orders. Notwithstanding anything to the contrary herein, and subject in all respects to the DIP Orders, the Secured Parties shall be entitled to credit bid, either directly or through one or more acquisition vehicles, all or any portion of the Obligations and any other claims held by the Secured Parties in any sale or disposition of Collateral under section 363 of the Bankruptcy Code or otherwise, in each case to the extent such claims have not been rolled up into, or otherwise indefeasibly paid in full in cash as part of, the DIP Term Loans or the Obligations. In connection with any such credit bid or purchase, (i) the Obligations owed to the Lenders and the Bank Product Providers shall be entitled to be, and shall be, credit bid on a ratable basis, with Obligations with respect to contingent or unliquidated claims being estimated for such purpose if the fixing or liquidation thereof would not impair or unduly delay the ability of Agent to credit bid or purchase at such sale or other disposition of the Collateral and, if such contingent or unliquidated claims cannot be estimated without impairing or unduly delaying the ability of Agent to credit bid at such sale or other disposition, then such claims shall be disregarded, not credit bid, and not entitled to any interest in the Collateral that is the subject of such credit bid or purchase, and the Lenders and the Bank Product Providers whose Obligations are credit bid shall be entitled to receive interests, ratably based upon the proportion of their Obligations credit bid in relation to the aggregate amount of Obligations so credit bid, in the Collateral that is the subject of such credit bid or purchase or in the Equity Interests of any entities that are used to consummate such credit bid or purchase, and (ii) Agent, based upon the instruction of the Required Lenders, may accept non-cash consideration, including debt and equity securities issued by any entities used to consummate such credit bid or purchase and in connection therewith Agent may reduce the Obligations owed to the Lenders and the Bank Product Providers, ratably based upon the proportion of their Obligations credit bid in relation to the aggregate amount of Obligations so credit bid, based upon the value of such non-cash consideration; provided, that Bank Product Obligations shall not be entitled to be, and shall not be, credit bid, or used in the calculation of the ratable interest of the Lenders and Bank Product Providers in the Obligations which are credit bid. Except as provided above, Agent will not execute and deliver a release of any Lien on any Collateral without the prior written authorization of (y) if the release is of all or a material portion of the Collateral, all of the Lenders (without requiring the authorization of the Bank Product Providers), or (z) otherwise, the Required Lenders (without requiring the authorization of the Bank Product Providers). Upon request by Agent or Borrowers at any time, the Lenders will (and if so requested, the Bank Product Providers will) confirm in writing Agent's authority to release any such Liens on particular types or items of Collateral pursuant to this Section 15.11; provided, that (1) anything to the contrary contained in any of the Loan Documents notwithstanding, Agent shall not be required to execute any document or take any action necessary to evidence such release on terms that, in Agent's opinion, could expose Agent to liability or create any obligation or entail any consequence other than the release of such Lien without recourse, representation, or warranty, and (2) such release shall not in any manner discharge, affect, or impair the Obligations or any Liens (other than those expressly released) upon (or obligations of Borrowers in respect of) any and all interests retained by any Borrower, including, the proceeds of any sale, all of which shall continue to constitute part of the Collateral. Each Lender further hereby irrevocably authorizes (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to irrevocably authorize) Agent, at its option and in its sole discretion, to subordinate (by contract or otherwise) any Lien granted to or held by Agent on any property under any Loan Document (a) to the holder of any Permitted Lien on such property if such Permitted Lien secures purchase money Indebtedness (including Capitalized Lease Obligations) which constitute Permitted

Indebtedness and (b) to the extent Agent has the authority under this Section 15.11 to release its Lien on such property. Notwithstanding the provisions of this Section 15.11, Agent shall be authorized, without the consent of any Lender and without the requirement that an asset sale consisting of the sale, transfer or other disposition having occurred, to release any security interest in any building, structure or improvement located in an area determined by the Federal Emergency Management Agency to have special flood hazards.

(b) Agent shall have no obligation whatsoever to any of the Lenders (or the Bank Product Providers) (i) to verify or assure that the Collateral exists or is owned by a Loan Party or any of its Subsidiaries or is cared for, protected, or insured or has been encumbered, (ii) to verify or assure that Agent's Liens have been properly or sufficiently or lawfully created, perfected, protected, or enforced or are entitled to any particular priority, (iii) to verify or assure that any particular items of Collateral meet the eligibility criteria applicable in respect thereof, (iv) [reserved], or (v) to exercise at all or in any particular manner or under any duty of care, disclosure or fidelity, or to continue exercising, any of the rights, authorities and powers granted or available to Agent pursuant to any of the Loan Documents or the DIP Orders, it being understood and agreed that in respect of the Collateral, or any act, omission, or event related thereto, subject to the terms and conditions contained herein and the DIP Orders, Agent may act in any manner it may deem appropriate, in its sole discretion given Agent's own interest in the Collateral in its capacity as one of the Lenders and that Agent shall have no other duty or liability whatsoever to any Lender (or Bank Product Provider)as to any of the foregoing, except as otherwise expressly provided herein.

15.12 **Restrictions on Actions by Lenders; Sharing of Payments**.

(a) Each of the Lenders agrees that it shall not, without the express written consent of Agent, and that it shall, to the extent it is lawfully entitled to do so, upon the written request of Agent, set off against the Obligations, any amounts owing by such Lender to any Loan Party or its Subsidiaries or any Deposit Accounts of any Loan Party or its Subsidiaries now or hereafter maintained with such Lender. Each of the Lenders further agrees that it shall not, unless specifically requested to do so in writing by Agent, take or cause to be taken any action, including the commencement of any legal or equitable proceedings to enforce any Loan Document against any Borrower or any Guarantor or to foreclose any Lien on, or otherwise enforce any security interest in, any of the Collateral.

(b) If, at any time or times any Lender shall receive (i) by payment, foreclosure, setoff, or otherwise, any proceeds of Collateral or any payments with respect to the Obligations, except for any such proceeds or payments received by such Lender from Agent pursuant to the terms of this Agreement, or (ii) payments from Agent in excess of such Lender's Pro Rata Share of all such distributions by Agent, such Lender promptly shall (A) turn the same over to Agent, in kind, and with such endorsements as may be required to negotiate the same to Agent, or in immediately available funds, as applicable, for the account of all of the Lenders and for application to the Obligations in accordance with the applicable provisions of this Agreement, or (B) purchase, without recourse or warranty, an undivided interest and participation in the Obligations owed to the other Lenders so that such excess payment received shall be applied ratably as among the Lenders in accordance with their Pro Rata Shares; provided, that to the extent that such excess payment received by the purchasing party is thereafter recovered from it, those purchases of participations shall be rescinded in whole or in part, as applicable, and the applicable portion of the purchase price paid therefor shall be returned to such purchasing party, but without interest except to the extent that such purchasing party is required to pay interest in connection with the recovery of the excess payment.

15.13 **Agency for Perfection**. Agent hereby appoints each other Lender (and each Bank Product Provider) as its agent (and each Lender hereby accepts (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to accept) such appointment) for the purpose of perfecting Agent's Liens in assets which, in accordance with Article 8 or Article 9, as applicable, of the Code can be perfected by possession or control. Should any Lender obtain possession or control of any such Collateral,

such Lender shall notify Agent thereof, and, promptly upon Agent's request therefor shall deliver possession or control of such Collateral to Agent or in accordance with Agent's instructions.

15.14 **Payments by Agent to the Lenders**. All payments to be made by Agent to the Lenders (or Bank Product Providers) shall be made by bank wire transfer of immediately available funds pursuant to such wire transfer instructions as each party may designate for itself by written notice to Agent. Concurrently with each such payment, Agent shall identify whether such payment (or any portion thereof) represents principal, premium, fees, or interest of the Obligations.

15.15 **Concerning the Collateral and Related Loan Documents**. Each member of the Lender Group authorizes and directs Agent to enter into this Agreement and the other Loan Documents. Each member of the Lender Group agrees (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to agree) that any action taken by Agent in accordance with the terms of this Agreement or the other Loan Documents relating to the Collateral and the exercise by Agent of its powers set forth therein or herein, together with such other powers that are reasonably incidental thereto, shall be binding upon all of the Lenders (and such Bank Product Provider).

15.16 **Field Examination Reports; Confidentiality; Disclaimers by Lenders; Other Reports and Information**. By becoming a party to this Agreement, each Lender:

(a) is deemed to have requested that Agent furnish such Lender, promptly after it becomes available, a copy of each field examination report respecting any Loan Party or its Subsidiaries (each, a "Report") prepared by or at the request of Agent, and Agent shall so furnish each Lender with such Reports,

(b) expressly agrees and acknowledges that Agent does not (i) make any representation or warranty as to the accuracy of any Report, and (ii) shall not be liable for any information contained in any Report,

(c) expressly agrees and acknowledges that the Reports are not comprehensive audits or examinations, that Agent or other party performing any field examination will inspect only specific information regarding the Loan Parties and their Subsidiaries and will rely significantly upon Borrowers' and their Subsidiaries' books and records, as well as on representations of Borrowers' personnel,

(d) agrees to keep all Reports and other material, non-public information regarding the Loan Parties and their Subsidiaries and their operations, assets, and existing and contemplated business plans in a confidential manner in accordance with Section 17.9, and

(e) without limiting the generality of any other indemnification provision contained in this Agreement, agrees: (i) to hold Agent and any other Lender preparing a Report harmless from any action the indemnifying Lender may take or fail to take or any conclusion the indemnifying Lender may reach or draw from any Report in connection with any loans or other credit accommodations that the indemnifying Lender has made or may make to Borrowers, or the indemnifying Lender's participation in, or the indemnifying Lender's purchase of, a loan or loans of Borrowers, and (ii) to pay and protect, and indemnify, defend and hold Agent, and any such other Lender preparing a Report harmless from and against, the claims, actions, proceedings, damages, costs, expenses, and other amounts (including attorneys' fees and costs) incurred by Agent and any such other Lender preparing a Report as the direct or indirect result of any third parties who might obtain all or part of any Report through the indemnifying Lender.

In addition to the foregoing, (x) any Lender may from time to time request of Agent in writing that Agent provide to such Lender a copy of any report or document provided by any Loan Party or its Subsidiaries to

Agent that has not been contemporaneously provided by such Loan Party or such Subsidiary to such Lender, and, upon receipt of such request, Agent promptly shall provide a copy of same to such Lender, (y) to the extent that Agent is entitled, under any provision of the Loan Documents, to request additional reports or information from any Loan Party or its Subsidiaries, any Lender may, from time to time, reasonably request Agent to exercise such right as specified in such Lender's notice to Agent, whereupon Agent promptly shall request of Borrowers the additional reports or information reasonably specified by such Lender, and, upon receipt thereof from such Loan Party or such Subsidiary, Agent promptly shall provide a copy of same to such Lender, and (z) any time that Agent renders to Borrowers a statement regarding the Loan Account, Agent shall send a copy of such statement to each Lender.

15.17 **Several Obligations; No Liability**. Notwithstanding that certain of the Loan Documents now or hereafter may have been or will be executed only by or in favor of Agent in its capacity as such, and not by or in favor of the Lenders, any and all obligations on the part of Agent, if any, to make any credit available hereunder shall constitute the several, and not joint, obligations of the respective Lenders on a ratable basis, according to their respective Commitments, to make an amount of such credit not to exceed, in principal amount, at any one time outstanding, the amount of their respective Commitments. Nothing contained herein shall confer upon any Lender any interest in, or subject any Lender to any liability for, or in respect of, the business, assets, profits, losses, or liabilities of any other Lender. Each Lender shall be solely responsible for notifying its Participants of any matters relating to the Loan Documents to the extent any such notice may be required, and no Lender shall have any obligation, duty, or liability to any Participant of any other Lender. Except as provided in Section 15.7, no member of the Lender Group shall have any liability for the acts of any other member of the Lender Group. No Lender shall be responsible to any Borrower or any other Person for any failure by any other Lender (or Bank Product Provider) to fulfill its obligations to make credit available hereunder, nor to advance for such Lender (or Bank Product Provider) or on its behalf, nor to take any other action on behalf of such Lender (or Bank Product Provider) hereunder or in connection with the financing contemplated herein.

16. WITHHOLDING TAXES.

16.1 **Payments**. All payments made by any Loan Party under any Loan Document will be made free and clear of, and without deduction or withholding for, any Taxes, except as otherwise required by applicable law, and in the event any deduction or withholding of Taxes is required, the applicable Loan Party shall make the requisite withholding, promptly pay over to the applicable Governmental Authority the withheld tax, and furnish to Agent as promptly as possible after the date the payment of any such Tax is due pursuant to applicable law, certified copies of tax receipts evidencing such payment by the Loan Parties. Furthermore, if any such Tax is an Indemnified Taxes or an Indemnified Tax is so levied or imposed, the Loan Parties agree to pay the full amount of such Indemnified Taxes and such additional amounts as may be necessary so that every payment of all amounts due under this Agreement, any note, or Loan Document, including any amount paid pursuant to this Section 16.1 after withholding or deduction for or on account of any Indemnified Taxes, will not be less than the amount provided for herein. The Loan Parties will promptly pay any Other Taxes or reimburse Agent for such Other Taxes upon Agent's demand. The Loan Parties shall jointly and severally indemnify each Indemnified Person (as defined in Section 10.3) (collectively a "Tax Indemnitee") for the full amount of Indemnified Taxes arising in connection with this Agreement or any other Loan Document or breach thereof by any Loan Party (including any Indemnified Taxes imposed or asserted on, or attributable to, amounts payable under this Section 16) imposed on, or paid by, such Tax Indemnitee and all reasonable costs and expenses related thereto (including fees and disbursements of attorneys and other tax professionals), as and when they are incurred and irrespective of whether suit is brought, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority (other than Indemnified Taxes and additional amounts that a court of competent jurisdiction finally determines to have resulted from the gross negligence or willful misconduct of such Tax Indemnitee). The obligations of the Loan Parties under this Section 16 shall survive

the termination of this Agreement, the resignation and replacement of Agent, and the repayment of the Obligations.

16.2 **Exemptions**.

(a) If a Lender or Participant is entitled to claim an exemption or reduction from United States withholding tax, such Lender or Participant agrees with and in favor of Agent, to deliver to Agent (or, in the case of a Participant, to the Lender granting the participation only) and Parent Borrower on behalf of all Borrowers one of the following before receiving its first payment under this Agreement:

(i) if such Lender or Participant is entitled to claim an exemption from United States withholding tax pursuant to the portfolio interest exception, (A) a statement of the Lender or Participant, signed under penalty of perjury, that it is not a (I) a "bank" as described in Section 881(c)(3)(A) of the IRC, (II) a 10% shareholder of any Borrower (within the meaning of Section 871(h)(3)(B) of the IRC), or (III) a controlled foreign corporation related to Borrowers within the meaning of Section 864(d)(4) of the IRC, and (B) a properly completed and executed IRS Form W-8BEN, Form W-8BEN-E or Form W-8IMY (with proper attachments as applicable);

(ii) if such Lender or Participant is entitled to claim an exemption from, or a reduction of, withholding tax under a United States tax treaty, a properly completed and executed copy of IRS Form W-8BEN or Form W-8BEN-E, as applicable;

(iii) if such Lender or Participant is entitled to claim that interest paid under this Agreement is exempt from United States withholding tax because it is effectively connected with a United States trade or business of such Lender, a properly completed and executed copy of IRS Form W-8ECI;

(iv) if such Lender or Participant is entitled to claim that interest paid under this Agreement is exempt from United States withholding tax because such Lender or Participant serves as an intermediary, a properly completed and executed copy of IRS Form W-8IMY (including a withholding statement and copies of the tax certification documentation for its beneficial owner(s) of the income paid to the intermediary, if required based on its status provided on the Form W-8IMY); or

(v) a properly completed and executed copy of any other form or forms, including IRS Form W-9, as may be required under the IRC or other laws of the United States as a condition to exemption from, or reduction of, United States withholding or backup withholding tax.

(b) Each Lender or Participant shall provide new forms (or successor forms) upon the expiration or obsolescence of any previously delivered forms and promptly notify Agent and Parent Borrower (or, in the case of a Participant, to the Lender granting the participation only) of any change in circumstances which would modify or render invalid any claimed exemption or reduction.

(c) If a Lender or Participant claims an exemption from withholding tax in a jurisdiction other than the United States, such Lender or such Participant agrees with and in favor of Agent and Borrowers, to deliver to Agent and Parent Borrower (or, in the case of a Participant, to the Lender granting the participation only) any such form or forms, as may be required under the laws of such jurisdiction as a condition to exemption from, or reduction of, foreign withholding or backup withholding tax before receiving its first payment under this Agreement, but only if such Lender or such Participant is legally able to deliver such forms, or the providing of or delivery of such forms in the Lender's reasonable judgment would not subject such Lender to any material unreimbursed cost or expense or materially prejudice the legal or commercial position of such Lender (or its Affiliates); provided, further, that nothing

in this Section 16.2(c) shall require a Lender or Participant to disclose any information that it deems to be confidential (including its tax returns). Each Lender and each Participant shall provide new forms (or successor forms) upon the expiration or obsolescence of any previously delivered forms and promptly notify Agent and Parent Borrower (or, in the case of a Participant, to the Lender granting the participation only) of any change in circumstances which would modify or render invalid any claimed exemption or reduction.

(d) If a Lender or Participant claims exemption from, or reduction of, withholding tax and such Lender or Participant sells, assigns, grants a participation in, or otherwise transfers all or part of the Obligations of Borrowers to such Lender or Participant, such Lender or Participant agrees to notify Agent and Parent Borrower (or, in the case of a sale of a participation interest, to the Lender granting the participation only) of the percentage amount in which it is no longer the beneficial owner of Obligations of Borrowers to such Lender or Participant. To the extent of such percentage amount, Agent and Parent Borrower will treat such Lender's or such Participant's documentation provided pursuant to Section 16.2(a) or 16.2(c) as no longer valid. With respect to such percentage amount, such Participant or Assignee may provide new documentation, pursuant to Section 16.2(a) or 16.2(c), if applicable. Borrowers agree that each Participant shall be entitled to the benefits of this Section 16 with respect to its participation in any portion of the Commitments and the Obligations so long as such Participant complies with the obligations set forth in this Section 16 with respect thereto.

(e) If a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding tax imposed by FATCA if such Lender were to fail to comply with the applicable due diligence and reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the IRC, as applicable), such Lender shall deliver to Agent (or, in the case of a Participant, to the Lender granting the participation only) at the time or times prescribed by law and at such time or times reasonably requested by Agent (or, in the case of a Participant, the Lender granting the participation) such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the IRC) and such additional documentation reasonably requested by Agent (or, in the case of a Participant, the Lender granting the participation) as may be necessary for Agent or Borrowers to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (e), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

16.3 **Reductions**.

(a) If a Lender or a Participant is subject to an applicable withholding tax, Agent (or, in the case of a Participant, the Lender granting the participation) may withhold from any payment to such Lender or such Participant an amount equivalent to the applicable withholding tax. If the forms or other documentation required by Section 16.2(a) or 16.2(c) are not delivered to Agent (or, in the case of a Participant, to the Lender granting the participation), then Agent (or, in the case of a Participant, to the Lender granting the participation) may withhold from any payment to such Lender or such Participant not providing such forms or other documentation an amount equivalent to the applicable withholding tax.

(b) If the IRS or any other Governmental Authority of the United States or other jurisdiction asserts a claim that Agent (or, in the case of a Participant, to the Lender granting the participation) did not properly withhold tax from amounts paid to or for the account of any Lender or any Participant due to a failure on the part of the Lender or any Participant (because the appropriate form was not delivered, was not properly executed, or because such Lender failed to notify Agent (or such Participant failed to notify the Lender granting the participation) of a change in circumstances which rendered the exemption from, or reduction of, withholding tax ineffective, or for any other reason) such Lender shall

indemnify and hold Agent harmless (or, in the case of a Participant, such Participant shall indemnify and hold the Lender granting the participation harmless) for all amounts paid, directly or indirectly, by Agent (or, in the case of a Participant, to the Lender granting the participation), as tax or otherwise, including penalties and interest, and including any taxes imposed by any jurisdiction on the amounts payable to Agent (or, in the case of a Participant, to the Lender granting the participation only) under this Section 16, together with all costs and expenses (including attorneys' fees and expenses). The obligation of the Lenders and the Participants under this subsection shall survive the payment of all Obligations and the resignation or replacement of Agent.

16.4 **Refunds**. If Agent or a Lender determines, in its sole discretion, that it has received a refund of any Indemnified Taxes to which the Loan Parties have paid additional amounts pursuant to this Section 16, so long as no Default or Event of Default has occurred and is continuing, it shall pay over such refund to Parent Borrower on behalf of the Loan Parties (but only to the extent of payments made, or additional amounts paid, by the Loan Parties under this Section 16 with respect to Indemnified Taxes giving rise to such a refund), net of all out-of-pocket expenses of Agent or such Lender and without interest (other than any interest paid by the applicable Governmental Authority with respect to such a refund); provided, that the Loan Parties, upon the request of Agent or such Lender, agrees to repay the amount paid over to the Loan Parties (plus any penalties, interest or other charges, imposed by the applicable Governmental Authority, other than such penalties, interest or other charges imposed as a result of the willful misconduct or gross negligence of Agent or Lender hereunder as finally determined by a court of competent jurisdiction) to Agent or such Lender in the event Agent or such Lender is required to repay such refund to such Governmental Authority. Notwithstanding anything in this Agreement to the contrary, this Section 16 shall not be construed to require Agent or any Lender to make available its tax returns (or any other information which it deems confidential) to Loan Parties or any other Person or require Agent or any Lender to pay any amount to an indemnifying party pursuant to Section 16.4, the payment of which would place Agent or such Lender (or their Affiliates) in a less favorable net after-Tax position than such Person would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid.

17. GENERAL PROVISIONS.

17.1 **Effectiveness**. This Agreement shall be binding and deemed effective when executed by each Borrower, Agent, and each Lender whose signature is provided for on the signature pages hereof.

17.2 **Section Headings**. Headings and numbers have been set forth herein for convenience only. Unless the contrary is compelled by the context, everything contained in each Section applies equally to this entire Agreement.

17.3 **Interpretation**. Neither this Agreement nor any uncertainty or ambiguity herein shall be construed against the Lender Group or any Borrower, whether under any rule of construction or otherwise. On the contrary, this Agreement has been reviewed by all parties and shall be construed and interpreted according to the ordinary meaning of the words used so as to accomplish fairly the purposes and intentions of all parties hereto.

17.4 **Severability of Provisions**. Each provision of this Agreement shall be severable from every other provision of this Agreement for the purpose of determining the legal enforceability of any specific provision.

17.5 **Bank Product Providers** . Each Bank Product Provider in its capacity as such shall be deemed a third party beneficiary hereof and of the provisions of the other Loan Documents for purposes of

any reference in a Loan Document to the parties for whom Agent is acting. Agent hereby agrees to act as agent for such Bank Product Providers and, by virtue of entering into a Bank Product Agreement, the applicable Bank Product Provider shall be automatically deemed to have appointed Agent as its agent and to have accepted the benefits of the Loan Documents. It is understood and agreed that the rights and benefits of each Bank Product Provider under the Loan Documents consist exclusively of such Bank Product Provider's being a beneficiary of the Liens and security interests (and, if applicable, guarantees) granted to Agent and the right to share in payments and collections out of the Collateral as more fully set forth herein. In addition, each Bank Product Provider, by virtue of entering into a Bank Product Agreement, shall be automatically deemed to have agreed that Agent shall have the right, but shall have no obligation, to establish, maintain, relax, or release reserves in respect of the Bank Product Obligations and that if reserves are established there is no obligation on the part of Agent to determine or insure whether the amount of any such reserve is appropriate or not. In connection with any such distribution of payments or proceeds of Collateral, Agent shall be entitled to assume no amounts are due or owing to any Bank Product Provider unless such Bank Product Provider has provided a written certification (setting forth a reasonably detailed calculation) to Agent as to the amounts that are due and owing to it and such written certification is received by Agent a reasonable period of time prior to the making of such distribution. Agent shall have no obligation to calculate the amount due and payable with respect to any Bank Products, but may rely upon the written certification of the amount due and payable from the applicable Bank Product Provider. In the absence of an updated certification, Agent shall be entitled to assume that the amount due and payable to the applicable Bank Product Provider is the amount last certified to Agent by such Bank Product Provider as being due and payable (less any distributions made to such Bank Product Provider on account thereof). Borrowers may obtain Bank Products from any Bank Product Provider, although Borrowers are not required to do so. Each Borrower acknowledges and agrees that no Bank Product Provider has committed to provide any Bank Products and that the providing of Bank Products by any Bank Product Provider is in the sole and absolute discretion of such Bank Product Provider. Notwithstanding anything to the contrary in this Agreement or any other Loan Document, no provider or holder of any Bank Product shall have any voting or approval rights hereunder (or be deemed a Lender) solely by virtue of its status as the provider or holder of such agreements or products or the Obligations owing thereunder, nor shall the consent of any such provider or holder be required (other than in their capacities as Lenders, to the extent applicable) for any matter hereunder or under any of the other Loan Documents, including as to any matter relating to the Collateral or the release of Collateral or Guarantors.

17.6 **Debtor-Creditor Relationship**. The relationship between the Lenders and Agent, on the one hand, and the Loan Parties, on the other hand, is solely that of creditor and debtor. No member of the Lender Group has (or shall be deemed to have) any fiduciary relationship or duty to any Loan Party arising out of or in connection with the Loan Documents or the transactions contemplated thereby, and there is no agency or joint venture relationship between the members of the Lender Group, on the one hand, and the Loan Parties, on the other hand, by virtue of any Loan Document or any transaction contemplated therein.

17.7 **Counterparts; Electronic Execution**. This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, when taken together, shall constitute but one and the same Agreement. Execution of any such counterpart may be by means of (a) an electronic signature that complies with the federal Electronic Signatures in Global and National Commerce Act, as in effect from time to time, state enactments of the Uniform Electronic Transactions Act, as in effect from time to time, or any other relevant and applicable electronic signatures law; (b) an original manual signature; or (c) a faxed, scanned, or photocopied manual signature. Each electronic signature or faxed, scanned, or photocopied manual signature shall for all purposes have the same validity, legal effect, and admissibility in evidence as an original manual signature. Agent reserves the right, in its discretion, to accept, deny, or condition acceptance of any electronic signature on this Agreement. Any party delivering an executed counterpart of this Agreement by faxed, scanned or photocopied manual signature shall also deliver an

original manually executed counterpart, but the failure to deliver an original manually executed counterpart shall not affect the validity, enforceability and binding effect of this Agreement. The foregoing shall apply to each other Loan Document, and any notice delivered hereunder or thereunder, *mutatis mutandis.*

17.8 **Revival and Reinstatement of Obligations; Certain Waivers**. If any member of the Lender Group or any Bank Product Provider repays, refunds, restores, or returns in whole or in part, any payment or property (including any proceeds of Collateral) previously paid or transferred to such member of the Lender Group or such Bank Product Provider in full or partial satisfaction of any Obligation or on account of any other obligation of any Loan Party under any Loan Document, any Bank Product Agreement or the DIP Orders, because the payment, transfer, or the incurrence of the obligation so satisfied is asserted or declared to be void, voidable, or otherwise recoverable under any law relating to creditors' rights, including provisions of the Bankruptcy Code relating to fraudulent transfers, preferences, or other voidable or recoverable obligations or transfers (each, a "Voidable Transfer"), or because such member of the Lender Group or Bank Product Provider elects to do so on the reasonable advice of its counsel in connection with a claim that the payment, transfer, or incurrence is or may be a Voidable Transfer, then, as to any such Voidable Transfer, or the amount thereof that such member of the Lender Group or Bank Product Provider elects to repay, restore, or return (including pursuant to a settlement of any claim in respect thereof), and as to all reasonable costs, expenses, and attorneys' fees of such member of the Lender Group or Bank Product Provider related thereto, (i) the liability of the Loan Parties with respect to the amount or property paid, refunded, restored, or returned will automatically and immediately be revived, reinstated, and restored and will exist, and (ii) Agent's Liens securing such liability shall be effective, revived and remain in full force and effect, in each case, as fully as if such Voidable Transfer had never been made. If, prior to any of the foregoing, (A) Agent's Liens shall have been released or terminated, or (B) any provision of this Agreement shall have been terminated or cancelled, Agent's Liens, or such provision of this Agreement, shall be reinstated in full force and effect and such prior release, termination, cancellation or surrender shall not diminish, release, discharge, impair or otherwise affect the obligation of any Loan Party in respect of such liability or any Collateral securing such liability. This provision shall survive the termination of this Agreement and the repayment in full of the Obligations.

17.9 **Confidentiality**.

(a) Agent and Lenders each individually, and not jointly or jointly and severally, agree that material, non-public information regarding the Loan Parties and their Subsidiaries, their operations, assets, and existing and contemplated business plans ("Confidential Information") shall be treated by Agent and the Lenders in a confidential manner, and shall not be disclosed by Agent and the Lenders to Persons who are not parties to this Agreement, except: (i) to attorneys for and other advisors, accountants, auditors, and consultants to any member of the Lender Group and to employees, directors and officers of any member of the Lender Group (the Persons in this clause (i), "Lender Group Representatives") on a "need to know" basis in connection with this Agreement and the transactions contemplated hereby and on a confidential basis, (ii) to Subsidiaries and Affiliates of any member of the Lender Group (including the Bank Product Providers); provided, that any such Subsidiary or Affiliate shall have agreed to receive such information hereunder subject to the terms of this Section 17.9, (iii) as may be required by regulatory authorities so long as such authorities are informed of the confidential nature of such information, (iv) as may be required by statute, decision, or judicial or administrative order, rule, or regulation; provided, that (x) prior to any disclosure under this clause (iv), the disclosing party agrees to provide Borrowers with prior notice thereof, to the extent that it is practicable to do so and to the extent that the disclosing party is permitted to provide such prior notice to Borrowers pursuant to the terms of the applicable statute, decision, or judicial or administrative order, rule, or regulation and (y) any disclosure under this clause (iv) shall be limited to the portion of the Confidential Information as may be required by such statute, decision, or judicial or administrative order, rule, or regulation, (v) as may be agreed to in advance in writing by Borrowers, (vi) as requested or required by any Governmental Authority pursuant to any subpoena or other legal process;

provided, that (x) prior to any disclosure under this clause (vi) the disclosing party agrees to provide Borrowers with prior written notice thereof, to the extent that it is practicable to do so and to the extent that the disclosing party is permitted to provide such prior written notice to Borrowers pursuant to the terms of the subpoena or other legal process and (y) any disclosure under this clause (vi) shall be limited to the portion of the Confidential Information as may be required by such Governmental Authority pursuant to such subpoena or other legal process, (vii) as to any such information that is or becomes generally available to the public other than as a result of prohibited disclosure by Agent or the Lenders or the Lender Group Representatives, (viii) in connection with any assignment, participation or pledge of any Lender's interest under this Agreement; provided, that prior to receipt of Confidential Information any such assignee, participant, or pledgee shall have agreed in writing to receive such Confidential Information either subject to the terms of this Section 17.9 or pursuant to confidentiality requirements substantially similar to those contained in this Section 17.9, and such Person may disclose such Confidential Information to Persons employed or engaged by them as described in clause (i) above, (ix) in connection with any litigation, contested matter, adversary proceeding or other proceeding involving parties hereto which such litigation, contested matter, adversary proceeding or other proceeding involves claims related to the rights or duties of such parties under this Agreement, the DIP Orders or the other Loan Documents; provided, that prior to any disclosure to any Person, other than any Loan Party, Agent, any Lender, any of their respective Affiliates, or their respective counsel, under this clause (ix) with respect to litigation involving any Person, other than any Borrower, Agent, any Lender, any of their respective Affiliates, or their respective counsel, the disclosing party agrees to provide Borrowers with prior written notice thereof, (x) in connection with, and to the extent reasonably necessary for, the exercise of any secured creditor remedy under this Agreement, the DIP Orders or under any other Loan Document and (xi) as may be required by the Bankruptcy Court.

(b) Anything in this Agreement to the contrary notwithstanding, Agent and the Lead Arranger may disclose information concerning the terms and conditions of this Agreement, the DIP Orders and the other Loan Documents to loan syndication and pricing reporting services or in its marketing or promotional materials, with such information to consist of deal terms and other information customarily found in such publications or marketing or promotional materials and may otherwise use the name, logos, and other insignia of any Borrower or the other Loan Parties and the Commitments provided hereunder in any "tombstone" or other advertisements, on its website or in other marketing materials of Agent or the Lead Arranger, as applicable.

(c) Each Loan Party agrees that Agent may make materials or information provided by or on behalf of Borrowers hereunder (collectively, "Borrower Materials") available to the Lenders by posting the Communications on IntraLinks, SyndTrak or a substantially similar secure electronic transmission system (the "Platform"). The Platform is provided "as is" and "as available." Agent does not warrant the accuracy or completeness of the Borrower Materials, or the adequacy of the Platform and expressly disclaims liability for errors or omissions in the communications. No warranty of any kind, express, implied or statutory, including any warranty of merchantability, fitness for a particular purpose, non-infringement of third party rights or freedom from viruses or other code defects, is made by Agent in connection with the Borrower Materials or the Platform. In no event shall Agent or any of the Agent-Related Persons have any liability to the Loan Parties, any Lender or any other Person for damages of any kind, including direct or indirect, special, incidental or consequential damages, losses or expenses, whether in tort, contract or otherwise, arising out of any Loan Party's or Agent's transmission of communications through the Internet, except to the extent the liability of such Person is found in a final non-appealable judgment by a court of competent jurisdiction to have resulted from such Person's gross negligence or willful misconduct. Each Loan Party further agrees that certain of the Lenders may be "public-side" Lenders (i.e., Lenders that do not wish to receive material non-public information with respect to the Loan Parties or their securities) (each, a "Public Lender"). The Loan Parties shall be deemed to have authorized Agent and its Affiliates and the Lenders to treat Borrower Materials marked "PUBLIC" or otherwise at any time

filed with the SEC as not containing any material non-public information with respect to the Loan Parties or their securities for purposes of United States federal and state securities laws. All Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated as "Public Investor" or another similar term. Agent and its Affiliates and the Lenders shall be entitled to treat any Borrower Materials that are not marked "PUBLIC" or that are not at any time filed with the SEC as being suitable only for posting on a portion of the Platform not marked as "Public Investor" or such other similar term.

17.10 **Survival**. All representations and warranties made by the Loan Parties in the Loan Documents and in the certificates or other instruments delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of the Loan Documents and the making of any Loans, regardless of any investigation made by any such other party or on its behalf and notwithstanding that Agent, or any Lender may have had notice or knowledge of any Default or Event of Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of, or any accrued interest on, any Loan or any fee or any other amount payable under this Agreement is outstanding or unpaid and so long as the Commitments have not expired or been terminated.

17.11 **Patriot Act; Due Diligence**. Each Lender that is subject to the requirements of the Patriot Act hereby notifies the Loan Parties that pursuant to the requirements of the Patriot Act, it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of each Loan Party and other information that will allow such Lender to identify each Loan Party in accordance with the Patriot Act. In addition, Agent and each Lender shall have the right to periodically conduct due diligence on all Loan Parties, their senior management and key principals and legal and beneficial owners. Each Loan Party agrees to cooperate in respect of the conduct of such due diligence and further agrees that the reasonable costs and charges for any such due diligence by Agent shall constitute Lender Group Expenses hereunder and be for the account of Borrowers.

17.12 **Integration**. This Agreement, together with the DIP Orders and the other Loan Documents, reflects the entire understanding of the parties with respect to the transactions contemplated hereby and thereby and shall not be contradicted or qualified by any other agreement, oral or written, before the date hereof. The foregoing to the contrary notwithstanding, all Bank Product Agreements, if any, are independent agreements governed by the written provisions of such Bank Product Agreements, which will remain in full force and effect, unaffected by any repayment, prepayments, acceleration, reduction, increase, or change in the terms of any credit extended hereunder, except as otherwise expressly provided in such Bank Product Agreement.

17.13 **RNDC as Borrower Representative**. Each Borrower hereby irrevocably appoints RNDC as the borrowing agent and attorney-in-fact for all Borrowers (in such capacity, the "Borrower Representative") which appointment shall remain in full force and effect unless and until Agent shall have received prior written notice signed by each Borrower that such appointment has been revoked and that another Borrower has been appointed Borrower Representative. Each Borrower hereby irrevocably appoints and authorizes Borrower Representative (a) to provide Agent with all notices with respect to Loans obtained for the benefit of any Borrower and all other notices and instructions under this Agreement and the other Loan Documents, and any notice or instruction provided by Borrower Representative shall be deemed to be given by Borrowers hereunder and shall bind each Borrower, (b) to receive notices and instructions from members of the Lender Group, and any notice or instruction provided by any member of the Lender Group to Borrower Representative in accordance with the terms hereof shall be deemed to have been given to each Borrower, and (c) to take such action as Borrower Representative deems appropriate on its behalf to obtain Loans and to exercise such other powers as are reasonably incidental thereto to carry

out the purposes of this Agreement. It is understood that the handling of the Loan Account and Collateral in a combined fashion, as more fully set forth herein, is done solely as an accommodation to Borrowers in order to utilize the collective borrowing powers of Borrowers in the most efficient and economical manner and at their request, and that Lender Group shall not incur liability to any Borrower as a result hereof. Each Borrower expects to derive benefit, directly or indirectly, from the handling of the Loan Account and the Collateral in a combined fashion since the successful operation of each Borrower is dependent on the continued successful performance of the integrated group. To induce the Lender Group to do so, and in consideration thereof, each Borrower hereby jointly and severally agrees to indemnify each member of the Lender Group and hold each member of the Lender Group harmless against any and all liability, expense, loss or claim of damage or injury, made against the Lender Group by any Borrower or by any third party whosoever, arising from or incurred by reason of (i) the handling of the Loan Account and Collateral of Borrowers as herein provided, or (ii) the Lender Group's relying on any instructions of Borrower Representative, except that Borrowers will have no liability to the relevant Agent-Related Person or Lender-Related Person under this Section 17.13 with respect to any liability that has been finally determined by a court of competent jurisdiction to have resulted solely from the gross negligence or willful misconduct of such Agent-Related Person or Lender-Related Person, as the case may be.

17.14 **Acknowledgement and Consent to Bail-In of Affected Financial Institutions**. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Affected Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an Affected Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of the applicable Resolution Authority.

17.15 **Acknowledgement Regarding Any Supported QFCs**. To the extent that the Loan Documents provide support, through a guarantee or otherwise, for Hedge Agreements or any other agreement or instrument that is a QFC (such support, "QFC Credit Support" and each such QFC a "Supported QFC"), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the "U.S. Special Resolution Regimes") in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York or of the United States or any other state of the United States): In the event a Covered Entity that is party to a Supported QFC (each,

a "Covered Party") becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

17.16 **Erroneous Payments**.

(a) Each Lender, each other Bank Product Provider and any other party hereto hereby severally agrees that if (i) Agent notifies, which such notice shall be conclusive absent manifest error, such Lender or any Bank Product Provider (or the Lender which is an Affiliate of a Lender or Bank Product Provider) or any other Person that has received funds from Agent or any of its Affiliates, either for its own account or on behalf of a Lender or Bank Product Provider (each such recipient, a "Payment Recipient"), that Agent has determined in its sole discretion that any funds received by such Payment Recipient were erroneously transmitted to, or otherwise erroneously or mistakenly received by, such Payment Recipient, whether or not known to such Payment Recipient, or (ii) any Payment Recipient receives any payment from Agent or any of its Affiliates (x) that is in a different amount than, or on a different date from, that specified in a notice of payment, prepayment or repayment sent by Agent or any of its Affiliates with respect to such payment, prepayment or repayment, as applicable, (y) that was not preceded or accompanied by a notice of payment, prepayment or repayment sent by Agent or any of its Affiliates with respect to such payment, prepayment or repayment, as applicable, or (z) that such Payment Recipient otherwise becomes aware was transmitted or received in error or by mistake, in whole or in part, then, in each case, an error in payment shall be presumed to have been made. Any such amounts specified in clauses (i) or (ii) of this Section 17.16(a), whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise, are referred to individually and collectively as an "Erroneous Payment." Each Payment Recipient shall be deemed to have knowledge of such error at the time of its receipt of such Erroneous Payment; provided, that nothing in this Section shall require Agent to provide any of the notices specified in clauses (i) or (ii) above. Each Payment Recipient agrees that it shall not assert any right or claim to any Erroneous Payment, and hereby waives any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by Agent for the return of any Erroneous Payments, including waiver of any defense based on "discharge for value" or any similar doctrine.

(b) Without limiting the immediately preceding clause (a), each Payment Recipient agrees that, in the case of clause (a)(ii) above, it shall promptly notify Agent in writing of such occurrence.

(c) In the case of either clause (a)(i) or clause (a)(ii) above, such Erroneous Payment shall at all times remain the property of Agent and shall be segregated by the Payment Recipient and held in trust for the benefit of Agent, and upon demand from Agent such Payment Recipient shall, or shall cause any Person who received any portion of an Erroneous Payment on its behalf to, promptly, but in all events no later than one Business Day thereafter, return to Agent the amount of any such Erroneous Payment, or portion thereof, as to which such a demand was made in same day funds and in the currency so received,

together with interest thereon in respect of each day from and including the date such Erroneous Payment, or portion thereof, was received by such Payment Recipient to the date such amount is repaid to Agent at the greater of the Federal Funds Rate and a rate determined by Agent in accordance with banking industry rules on interbank compensation from time to time in effect.

(d) In the event that an Erroneous Payment, or portion thereof, is not recovered by Agent for any reason, after demand therefor by Agent in accordance with immediately preceding clause (c), from any Lender that is a Payment Recipient or an Affiliate of a Payment Recipient (such unrecovered amount as to such Lender, an "Erroneous Payment Return Deficiency"), then at the sole discretion of Agent and upon Agent's written notice to such Lender, (i) such Lender shall be deemed to have made a cashless assignment of the full face amount of the portion of its Loans, but not its Commitments, with respect to which such Erroneous Payment was made (the "Erroneous Payment Impacted Loans") to Agent or, at the option of Agent, Agent's applicable lending affiliate (such assignee, the "Agent Assignee") in an amount that is equal to the Erroneous Payment Return Deficiency, or such lesser amount as Agent may specify, plus any accrued and unpaid interest on such assigned amount, without further consent or approval of any party hereto and without any payment by Agent Assignee as the assignee of such Erroneous Payment Deficiency Assignment. Without limitation of its rights hereunder, following the effectiveness of the Erroneous Payment Deficiency Assignment, Agent may make a cashless reassignment to the applicable assigning Lender of any Erroneous Payment Deficiency Assignment at any time by written notice to the applicable assigning Lender and upon such reassignment all of the Loans assigned pursuant to such Erroneous Payment Deficiency Assignment shall be reassigned to such Lender without any requirement for payment or other consideration. The parties hereto acknowledge and agree that (1) any assignment contemplated in this clause (d) shall be made without any requirement for any payment or other consideration paid by the applicable assignee or received by the assignor, (2) the provisions of this clause (d) shall govern in the event of any conflict with the terms and conditions of Section 13 and (3) Agent may reflect such assignments in the Register without further consent or action by any other Person.

(e) Each party hereto hereby agrees that (x) in the event an Erroneous Payment, or portion thereof, is not recovered from any Payment Recipient that has received such Erroneous Payment, or portion thereof, for any reason, Agent (1) shall be subrogated to all the rights of such Payment Recipient and (2) is authorized to set off, net and apply any and all amounts at any time owing to such Payment Recipient under any Loan Document, or otherwise payable or distributable by Agent to such Payment Recipient from any source, against any amount due to Agent under this Section 17.16 or under the indemnification provisions of this Agreement, (y) the receipt of an Erroneous Payment by a Payment Recipient shall not for the purpose of this Agreement be treated as a payment, prepayment, repayment, discharge or other satisfaction of any Obligations owed by the Borrowers or any other Loan Party, except, in each case, to the extent such Erroneous Payment is, and solely with respect to the amount of such Erroneous Payment that is, comprised of funds received by Agent from the Borrowers or any other Loan Party for the purpose of making a payment on the Obligations and (z) to the extent that an Erroneous Payment was in any way or at any time credited as payment or satisfaction of any of the Obligations, the Obligations or any part thereof that were so credited, and all rights of the Payment Recipient, as the case may be, shall be reinstated and continue in full force and effect as if such payment or satisfaction had never been received.

(f) Each party's obligations under this Section 17.16 shall survive the resignation or replacement of Agent or any transfer of rights or obligations by, or the replacement of, a Lender, the termination of the Commitments or the repayment, satisfaction or discharge of all Obligations, or any portion thereof, under any Loan Document.

(g) The provisions of this Section 17.16 to the contrary notwithstanding, (i) nothing in this Section 17.16 will constitute a waiver or release of any claim of any party hereunder arising from any

Payment Recipient's receipt of an Erroneous Payment and (ii) there will only be deemed to be a recovery of the Erroneous Payment to the extent that Agent has received payment from the Payment Recipient in immediately available funds of the Erroneous Payment Return Deficiency, whether directly from the Payment Recipient, as a result of the exercise by Agent of its rights of subrogation or set off as set forth above in clause (e) or as a result of the receipt by Agent Assignee of a payment of the outstanding principal balance of the Loans assigned to Agent Assignee pursuant to an Erroneous Payment Deficiency Assignment, but excluding any other amounts in respect thereof (it being agreed that any payments of interest, fees, expenses or other amounts, other than principal, received by Agent Assignee in respect of the Loans assigned to Agent Assignee pursuant to an Erroneous Payment Deficiency Assignment shall be the sole property of Agent Assignee and shall not constitute a recovery of the Erroneous Payment).

17.17 **Certain ERISA Matters**.

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of Agent and its Affiliates, and not, for the avoidance of doubt, to or for the benefit of any Borrower or any other Loan Party, that at least one of the following is and will be true:

(i) such Lender is not using "plan assets" (within the meaning of Section 3(42) of ERISA or otherwise) of one or more Benefit Plans (as defined below) with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, Commitments or this Agreement;

(ii) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender's entrance into, participation in, administration of and performance of the Loans and this Agreement;

(iii) (A) such Lender is an investment fund managed by a "Qualified Professional Asset Manager" (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender's entrance into, participation in, administration of and performance of the Loans and this Agreement; or

(iv) such other representation, warranty and covenant as may be agreed in writing between Agent, in its sole discretion, and such Lender.

(b) In addition, unless either (1) subclause (i) in the immediately preceding clause (a) is true with respect to a Lender or (2) a Lender has provided another representation, warranty and covenant in accordance with subclause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of Agent and its Affiliates, and not, for the avoidance of doubt, to or for the

benefit of any Borrower or any other Loan Party, that neither Agent nor any of its Affiliates is a fiduciary with respect to the assets of such Lender involved in such Lender's entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement, including in connection with the reservation or exercise of any rights by Agent under this Agreement, any Loan Document or any documents related hereto or thereto.

(c) Solely for purposes of this Section 17.17, the term "Benefit Plan" means any of (i) an "employee benefit plan" as defined in ERISA that is subject to Title I of ERISA, (ii) a "plan" as defined in Section 4975 of the Code or (iii) any Person whose assets include, for purposes of ERISA Section 3(42) or otherwise for purposes of Title I of ERISA or Section 4975 of the Code, the assets of any such "employee benefit plan" or "plan."

[Signature Pages Follow]

Exhibit 2

DIP Budget

Republic National Distributing Company, LLC
DIP Budget

$ USD millions **Week Ending**	**1** **7/31/2026**	**2** **8/7/2026**	**3** **8/14/2026**	**4** **8/21/2026**	**5** **8/28/2026**	**6** **9/4/2026**	**7** **9/11/2026**	**8** **9/18/2026**	**9** **9/25/2026**	**10** **10/2/2026**	**11** **10/9/2026**	**12** **10/16/2026**	**13** **10/23/2026**	**Forecast Total**
Operating Disbursements														
Payroll & Benefits	(7.5)	(2.8)	(7.0)	(1.9)	(6.6)	(3.3)	(7.4)	(3.2)	(3.1)	(4.6)	(1.6)	(1.2)	(2.1)	(52.1)
Vendor Payments	–	–	–	(4.4)	(4.4)	(4.3)	(4.3)	(4.3)	(2.3)	(2.3)	(2.3)	(2.0)	(1.8)	(32.4)
First Day Relief	(1.0)	(4.3)	(4.3)	(3.3)	–	–	–	–	–	–	–	–	–	(13.0)
Other (Excise Taxes, Insurance, Lease Payments)	(2.0)	(1.0)	(0.8)	–	–	(0.9)	(0.8)	(5.5)	–	(0.4)	–	(0.0)	–	(11.4)
Alaska & K&L Operations	–	–	–	(2.0)	(1.0)	(2.0)	(1.0)	(1.5)	–	–	–	–	–	(7.5)
Total Operating Disbursements	**(10.5)**	**(8.0)**	**(12.1)**	**(11.7)**	**(12.1)**	**(10.5)**	**(13.4)**	**(14.5)**	**(5.4)**	**(7.3)**	**(3.9)**	**(3.2)**	**(3.9)**	**(116.3)**
Net Operating Cash Flow	**(10.5)**	**(8.0)**	**(12.1)**	**(11.7)**	**(12.1)**	**(10.5)**	**(13.4)**	**(14.5)**	**(5.4)**	**(7.3)**	**(3.9)**	**(3.2)**	**(3.9)**	**(116.3)**
Non-Oper. & Restructuring Cash Flows														
Professional Fees	(2.5)	(5.5)	(3.5)	(2.8)	(4.7)	(4.0)	(3.3)	(2.3)	(3.7)	(3.0)	(2.3)	(2.3)	(6.1)	(46.0)
Employee Retention	(1.4)	–	–	–	–	–	–	–	–	–	–	–	(3.5)	(4.9)
Net Transaction Proceeds	–	2.4	–	–	–	–	–	91.4	–	–	–	12.9	63.4	170.1
Non-Oper. & Restructuring Cash Flows	**(3.9)**	**(3.1)**	**(3.5)**	**(2.8)**	**(4.7)**	**(4.0)**	**(3.3)**	**89.1**	**(3.7)**	**(3.0)**	**(2.3)**	**10.6**	**53.8**	**119.2**
Net Cash Flow Before Debt Service	**(14.4)**	**(11.1)**	**(15.5)**	**(14.4)**	**(16.8)**	**(14.5)**	**(16.8)**	**74.6**	**(9.1)**	**(10.3)**	**(6.2)**	**7.4**	**49.9**	**2.9**
Pre-DIP Draw/Paydown Debt Service														
Financing Fees/Funding of LC	(3.6)	–	–	–	–	–	–	–	–	–	–	–	(1.5)	(5.1)
Interest Payments	–	(0.2)	–	–	–	(0.9)	–	–	–	(2.1)	–	–	–	(3.2)
DIP Loan Draws/(Paydowns)	18.0	11.6	15.0	15.0	17.0	15.0	17.0	(54.1)	–	–	–	–	–	54.6
Blocked Account Draws/(Funding)	–	–	–	–	–	–	–	(21.3)	10.0	12.0	6.0	(6.9)	(53.4)	(53.6)
Pre-DIP Draw/Paydown Debt Service	**14.4**	**11.4**	**15.0**	**15.0**	**17.0**	**14.0**	**17.0**	**(75.4)**	**10.0**	**9.9**	**6.0**	**(6.9)**	**(54.9)**	**(7.3)**
Net Cash Flow	**0.0**	**0.3**	**(0.5)**	**0.6**	**0.3**	**(0.4)**	**0.3**	**(0.7)**	**0.9**	**(0.5)**	**(0.2)**	**0.5**	**(5.0)**	**(4.4)**
Beginning Cash Balance	**$ 5.3**	**$ 5.3**	**$ 5.6**	**$ 5.1**	**$ 5.7**	**$ 6.0**	**$ 5.6**	**$ 5.9**	**$ 5.1**	**$ 6.0**	**$ 5.5**	**$ 5.3**	**$ 5.9**	**$ 5.3**
Net Cash Flow	0.0	0.3	(0.5)	0.6	0.3	(0.4)	0.3	(0.7)	0.9	(0.5)	(0.2)	0.5	(5.0)	(4.4)
Ending Cash Balance	**$ 5.3**	**$ 5.6**	**$ 5.1**	**$ 5.7**	**$ 6.0**	**$ 5.6**	**$ 5.9**	**$ 5.1**	**$ 6.0**	**$ 5.5**	**$ 5.3**	**$ 5.9**	**$ 0.9**	**$ 0.9**
DIP Summary														
Receipts														
Customer Receipts	$ 4.0	$ 4.0	$ 3.3	$ 3.3	$ 2.1	$ 2.1	$ 2.1	$ 2.1	$ –	$ –	$ –	$ –	$ –	$ 22.9
Inventory Receipts	–	–	0.1	1.3	1.3	1.2	1.2	1.2	1.3	14.1	1.3	1.3	1.2	25.5
Other Receipts	5.5	1.7	0.0	5.5	–	7.2	–	5.5	–	8.2	–	–	–	33.7
Total Receipts	**9.5**	**5.7**	**3.5**	**10.1**	**3.3**	**10.5**	**3.2**	**8.7**	**1.3**	**22.3**	**1.3**	**1.3**	**1.2**	**82.0**
Beginning New Money DIP Balance	–	8.5	14.4	25.9	30.8	44.5	49.0	62.8	–	–	–	–	–	–
Draw	18.0	14.0	15.0	15.0	17.0	15.0	17.0	9.0	–	–	–	–	–	120.1
Paydown for Weekly Receipts	(9.5)	(5.7)	(3.5)	(10.1)	(3.3)	(10.5)	(3.2)	(8.7)	–	–	–	–	–	(54.6)
Paydown from Transactions	–	(2.4)	–	–	–	–	–	(63.1)	–	–	–	–	–	(65.5)
Ending New Money DIP Balance	**8.5**	**14.4**	**25.9**	**30.8**	**44.5**	**49.0**	**62.8**	**–**	**–**	**–**	**–**	**–**	**–**	**–**
Beginning Blocked Account Balance	–	–	–	–	–	–	–	–	21.3	12.6	22.9	18.2	26.4	–
Draw	–	–	–	–	–	–	–	(7.0)	(10.0)	(12.0)	(6.0)	(6.0)	(10.0)	(51.0)
Funding from Weekly Receipts	–	–	–	–	–	–	–	–	1.3	22.3	1.3	1.3	1.2	27.4
Funding from Transactions	–	–	–	–	–	–	–	28.3	–	–	–	12.9	63.4	104.6
Ending Blocked Account Balance	**–**	**–**	**–**	**–**	**–**	**–**	**–**	**21.3**	**12.6**	**22.9**	**18.2**	**26.4**	**81.0**	**81.0**
Ending Cash	5.3	5.6	5.1	5.7	6.0	5.6	5.9	5.1	6.0	5.5	5.3	5.9	0.9	0.9
Ending Blocked Account Balance	–	–	–	–	–	–	–	21.3	12.6	22.9	18.2	26.4	81.0	81.0
Available Liquidity	**$ 5.3**	**$ 5.6**	**$ 5.1**	**$ 5.7**	**$ 6.0**	**$ 5.6**	**$ 5.9**	**$ 26.4**	**$ 18.6**	**$ 28.5**	**$ 23.6**	**$ 32.3**	**$ 81.9**	**$ 81.9**
Memo														
Total DIP Availability	**$ 50.0**	**$ 50.0**	**$ 50.0**	**$ 50.0**	**$ 75.0**	**$ 75.0**	**$ 75.0**	**$ 75.0**	**$ 75.0**	**$ 75.0**	**$ 75.0**	**$ 75.0**	**$ 75.0**	**$ 75.0**
DIP Availability	**$ 41.5**	**$ 35.6**	**$ 24.1**	**$ 19.2**	**$ 30.5**	**$ 26.0**	**$ 12.2**	**$ 75.0**	**$ 75.0**	**$ 75.0**	**$ 75.0**	**$ 75.0**	**$ 75.0**	**$ 75.0**
DIP Draws	**$ 18.0**	**$ 14.0**	**$ 15.0**	**$ 15.0**	**$ 17.0**	**$ 15.0**	**$ 17.0**	**$ 16.0**	**$ 10.0**	**$ 12.0**	**$ 6.0**	**$ 6.0**	**$ 10.0**	**$ 171.1**
DIP-Roll Up Loan Balance	**$ 66.3**	**$ 66.3**	**$ 66.3**	**$ 66.3**	**$ 175.0**	**$ 175.0**	**$ 175.0**	**$ 175.0**	**$ 175.0**	**$ 175.0**	**$ 175.0**	**$ 175.0**	**$ 175.0**	**$ 175.0**
Prepetition ABL Loan Balance	**$ 157.6**	**$ 157.6**	**$ 157.6**	**$ 157.6**	**$ 48.9**	**$ 48.9**	**$ 48.9**	**$ 48.9**	**$ 48.9**	**$ 48.9**	**$ 48.9**	**$ 48.9**	**$ 48.9**	**$ 48.9**